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Alberta Public Utilities Board Decisions
1971. l.c.1



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Alberta Public Utilities Board

VOLUME XII

PART I

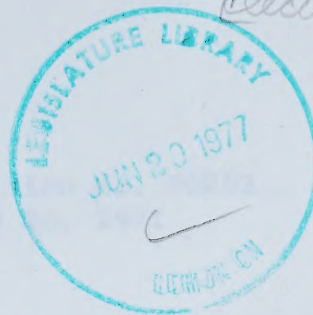
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and the Office of the
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* * * * *



IN THE MATTER OF "The New Towns
Act, 1960": and

IN THE MATTER OF "The Expropriation
Procedure Act": and

IN THE MATTER OF two applications
by the New Town of Fort McMurray
to the Public Utilities Board for
orders declaring the amount of money
payable to the owners of certain
lots expropriated by the New Town
of Fort McMurray.

BETWEEN:

THE NEW TOWN OF FORT McMURRAY

- Applicant

- and -

KENNETT Y. SPENCER

- Respondent

AND BETWEEN:

THE NEW TOWN OF FORT McMURRAY

- Applicant

- and -

FRANK STOCKL

- Respondent

APPEARANCES:

D. D. Duncan, Esq., Q.C.	:	for Frank Stockl
	:	
R.S. Holmes, Esq.	:	for Kennett Y. Spencer
	:	
G. E. Bussieres, Esq.	:	for the New Town of
	:	Fort McMurray.

D E C I S I O N

These are two applications to the Public Utilities Board
by the New Town of Fort McMurray, (hereinafter referred to
as "the Town"), for orders declaring the amount of money
payable to Frank Stockl and Kennett Y. Spencer for lots
owned by them which have been expropriated for the purposes
of enlarging a recreation centre in the Town.

By agreement between counsel for the Respondents and
Mr. Bussieres, Secretary-Treasurer for the Town, both
applications were heard together and to save repetition, it
was agreed that the evidence adduced would apply to both



applications. The determination of compensation to both owners can be fairly considered in one decision as the lots in question are unimproved and are in close proximity. In addition the evidence does not indicate any difference in value in the lots.

The lots owned by Mr. Stockl which have been expropriated are:

Lots 14, 18, 32 and 33 in Block 27 and
Lots 14, 15, 22 and 23, all in Block 28,
in Subdivision Plan 7904 A.S.
(Biggs Estate R.L. 20)

Mr. Spencer owned:

Lot 29 in Block 27, Subdivision Plan
7904 A.S.
(Biggs Estate R.L. 20)

Mr. Stockl and Mr. Spencer were notified of the expropriation by the Town in letters dated February 24, 1970, copies of which were filed with the Board. Included in the letter was a statement to the effect that a plan of the expropriated land was on file in the office of the Secretary-Treasurer and was available for inspection. In the absence of any other evidence, the Board deems February 24, 1970 to be the effective date for ascertaining compensation pursuant to Section 26 (4) of The Expropriation Procedure Act.

Blocks 27 and 28, together with Block 29, are situated south of and were apparently formerly part of River Lot 20, which is in the eastern part of the townsite. River Lot 20 is bounded on the north by Franklin Avenue, which extends easterly to the Clearwater River. River Lots 21 to 24 are east of River Lot 20 and Blocks 27, 28 and 29. The Clearwater River flows past the east side of River Lot 24, Near the south east corner of River Lot 24, the Hanging



Stone River flows into the Clearwater River. The Hanging Stone River lies south of the south boundary of Block 29 and River Lots 21 to 24.

King Street, a main thoroughfare connecting with a highway south of the Town, runs along the east side of Blocks 27, 28 and 29 and River Lot 20, dividing this area from one of the main residential sections which lies to the west. The south portion of River Lot 20, immediately north of Block 27 is the site of the recreation area, the expansion of which is the reason for the present expropriation. North of the recreation area, in Lot 1, there is a curling club. North of that, in the northern portion of River Lot 20, are provincial vocational training facilities. There is no evidence of any improvements on River Lot 21, immediately to the east. In the next lot, River Lot 22, there is a lumber yard, a propane sales outlet and a cement processing concern. The right-of-way for the Northern Alberta Railway cuts through this lot. The area to the west across King Street is entirely residential except for the south west corner of the intersection of King Street and Franklin Avenue, where there is a commercial trailer concern.

There was no evidence tendered with respect to commercial or industrial land values. Evidence of the value of residential lots was given on behalf of the Town by John N. Polonuk, a deputy director with the Provincial Planning Office of the Department of Municipal Affairs, and by Mr. Bussieres. Neither Mr. Polonuk nor Mr. Bussieres are qualified real estate appraisers although they are both familiar with land values in Fort McMurray. In their opinion market value of each lot is \$200.00.

In Mr. Polonuk's and Mr. Bussieres' opinion the lots are



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not suitable residential sites because the land is low lying and subject to flooding. Fort McMurray is situated close to the confluence of the Clearwater and Athabasca Rivers and there are other streams which flow into those rivers close to the Town, which periodically create flooding problems.

Because of the rapid expansion in Fort McMurray in recent years, flood control measures have had to be employed. A dike has been constructed adjacent to the Athabasca River and the Town has implemented measures preventing residential development below a contour level of 817. Exhibit #2, a partial contour map of the townsite, shows most of the residential areas about the 820 level. The expropriated lots lie in levels ranging from about 812 to 814.

Mr. Bussieres said the buildings for the vocational school and the nearby industrial and commercial developments are temporary buildings constructed on blocks because of the danger from flooding.

On Exhibit #1, a plan of the townsite, the water lines for floods in 1960 and 1963 drawn by Mr. Bussieres indicate that some of the lots were covered by water during the floods. He said that the most suitable use of the area is for recreational purposes because the damage caused by flooding would be minimal compared with other uses.

Evidence was tendered on behalf of Mr. Stockl and Mr. Spencer to show that the lots are worth between \$600.00 and \$800.00 each. The only sale of comparable property referred to the Board was the sale of Lots 30 and 31 in Block 27 which lie between Lot 32 owned by Mr. Stockl and Lot 29 owned by Mr. Spencer. This property is improved with a five roomed frame bungalow measuring 24' x 26'.



This property was sold under an agreement for sale in 1962 for a total of \$4,500.00 with a cash payment of \$1,000.00. It was later purchased by the Town in 1966 or 1967 for about \$6,000.00 or \$6,500.00. Mr. Spencer, who is a licensed real estate agent, but is not a qualified real estate appraiser, said on his own behalf that the house on Lots 30 and 31 is worth about \$3,000.00 and that his lot, Lot 29, is worth about \$750.00. A letter from a real estate agent in Fort McMurray, who was not present at the hearing, was tendered to support this valuation.

There was some evidence of other sales and land transactions in the Town which the Board does not consider helpful in determining the value of the lots under consideration.

Compensation in land expropriation proceedings must be determined according to the value to the owner. The Board is satisfied that in the present applications compensation can be fairly determined on the basis of the market value of the lots with some allowance for their potential value. Fort McMurray is a rapidly expanding community with a present population of some 5,000 - 6,000 persons and with the continuing development of the tar sands in the area, it seems reasonable to assume that the Town will continue to expand. Continued development in the Town should result in rising land prices and the potential increase in the value of land generally must be reflected in the amount of compensation to be paid to Mr. Spencer and Mr. Stockl. Although their lots are located in a low lying area that is subject to periodic flooding at the present time, in the Board's view, the location is not much lower than other developed parts of the Town. There is also the possibility that at some time in the future the elevation of the lots



could be raised and levelled for development. The Town representative agreed with this possibility, although at the present time, he said there was plenty of available land in better locations.

In the Board's opinion the evidence does not clearly establish the market value of the lots and this value and the allowance for the potential value of the lots must be determined by the exercise of judgment. The Board has concluded that the amount of compensation to be paid to Mr. Spencer and Mr. Stockl is on the basis of \$400.00 per lot.

Mr. Spencer will be paid the sum of \$400.00 for Lot 29 in Block 27, together with interest thereon at 7% per annum from the 24th day of February, 1970.

Mr. Stockl will be paid \$3,200.00 for Lots 14, 18, 32 and 33 in Block 27 and Lots 14, 15, 22 and 23 in Block 28, together with interest thereon at 7% per annum from the said 24th day of February, 1970.

Costs are awarded to the Respondents in such amount as may be agreed to by the parties, failing which at such amount as may be fixed by the Board.

DATED at the City of Edmonton, in the Province of Alberta, this 4th day of January, 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) W. D. ABERCROMBIE

MEMBER.

Certified a true copy,

Secretary.



IN THE MATTER OF "The Gas Utilities Act":

AND IN THE MATTER OF "The Public Utilities Board Act":

AND IN THE MATTER OF an application by Grande Prairie Transmission Co. Ltd. for a revision of the rates charged for gas delivered to Northland Utilities, Limited.

APPEARANCES:

A. P. Blakey, Esq.	:	For Grande Prairie Transmission Co. Ltd.
	:	
B. V. Massie, Esq., Q.C.	:	For Northland Utilities, Limited
	:	
W. H. Hurlburt, Esq., Q.C.	:	For the City of Grande Prairie

D E C I S I O N

This is an application by Grande Prairie Transmission Co. Ltd. asking for:

- (a) an investigation by the Board into all matters relating to the charges made by Grande Prairie to Northland for natural gas supplied:
- (b) an Order fixing the date for hearing of this application and the times within which the parties are to file their submissions.
- (c) an Interim Order of the Board to reflect an increase in the aforesaid commodity rate effective from a date to permit Grande Prairie to make a reasonable return upon the assets used by the said Company having regard to the cost, less depreciation, for the assets so used during its current fiscal year ending June 30, 1971.
- (d) an Order or Orders of the Board changing the charge to be made by Grande Prairie to Northland for gas sold and delivered under said agreement dated December 4, 1956 and as subsequently amended as aforesaid by a further amendment to reflect such charge as the Board deems fair and reasonable, to permit Grande Prairie to receive a fair and reasonable return on its assets used in the supply of natural gas to Northland.



The matter came on for hearing at the Board's offices in the City of Edmonton, on February 22, 1971 and concluded on February 23, 1971.

In the latter part of December 1963, the Board by its Decision No. 26425 and Order No. 26427, subsequently amended by Order No. 26428, reduced the commodity rate that Grande Prairie Transmission Co. Ltd. (hereinafter referred to as "Grande Prairie") was charging Northland Utilities, Limited (hereinafter referred to as "Northland") for natural gas from 20¢ per mcf to 11.5¢ per mcf.

At that time Grande Prairie was obtaining the gas that it supplied to Northland from three wells, being H.B.U.T. No. 1 well located in the Hamelin Creek Field at the northern end of the transmission line and Rycroft No. 1 and Rycroft No. 2 wells located in the Rycroft Field about 35 miles north of the City of Grande Prairie.

At the present time Grande Prairie obtains its gas supply from 6 wells as follows:

Rycroft No. 2 in the Rycroft Field in Township 77

Woking A-1 in the Woking Field in Township 75

Woking B-1 in the Woking Field in Township 75

Atlantic Richfield 10-30 in the Sexsmith Field
in Township 74

Atlantic Richfield 10-29 in the Sexsmith Field
in Township 74

Atlantic Richfield 13-20 in the Sexsmith Field
in Township 74

The well at Hamelin Creek and Rycroft No. 1 well had to be abandoned when water production created a problem. To connect the Woking wells to about the mid-point of the transmission

system Grande Prairie constructed a 4" lateral line east of the main transmission line. Similarly the Atlantic Richfield wells were connected to the main transmission line just north of the Village of Sexsmith by a 6" lateral to the west.

Mr. D. R. MacPhail, secretary of Grande Prairie, outlined the negotiations and contract arrangements that Grande Prairie has entered into to ensure an adequate supply of gas for the system. In the late winter of 1969, and primarily for emergency purposes should the production from any one well fail, Grande Prairie installed a small propane air plant at the City of Grande Prairie with a maximum capacity of 2,000 mcf per day. At the present time Grande Prairie is paying $12\frac{1}{2}\text{¢}$ per mcf for Atlantic Richfield (Sexsmith) and Ranger (Woking) gas and approximately 11¢ per mcf for Pacific Petroleum (Rycroft) gas. The rates for Atlantic Richfield and Ranger gas escalate at $1/4\text{¢}$ per mcf per year and for Pacific Petroleum gas the escalation is $1/3\text{¢}$ per mcf per year.

Mr. MacPhail said that at the present time Grande Prairie had a take or pay commitment of approximately 1,100 mmcf of gas per annum from the three suppliers, being 300 mmcf from Pacific Petroleum (Rycroft field), 500 mmcf from Ranger (Woking field) and 300 mmcf from Atlantic Richfield (Sexsmith field). Ranger has recently completed what appears to be an additional successful gas well in the Woking field. While little information about the potential of this well has been released at this time, Grande Prairie is hopeful that it will provide an additional reserve of gas for its system.

Estimates of gas reserves presently committed to the Grande Prairie system were made by McDaniel Consultants (1965)

Ltd. for Grande Prairie. Gas reserve estimates were also made by Northland. A comparative tabulation of the reserve estimates is as follows:

		Remaining Producing Reserves MMCF at 14.65 psia and 60° F Abandonment pressure 250 psia	
<u>Field</u>	<u>Zone</u>	<u>McDaniel</u>	<u>Northland</u>
Sexsmith	Dunvegan	3,390	2,983
Woking	Cadotte	1,470	1,166
	Paddy	2,440	3,600
Rycroft	Bluesky	<u>3,320</u>	<u>3,990</u>
Total -		10,620	11,739
		=====	=====

The total estimated reserves are relatively close with the majority of the difference being in the estimated reserves in the Paddy zone of the Woking field. Both Grande Prairie and Northland estimate that the present gas reserves and deliverability of the wells will only be adequate to supply Northland's requirements for a relatively short period of time and probably for not more than five years. Alternate sources of gas for the system will have to be considered in the near future. In the McDaniel report, which estimates the present reserves, the consulting engineer recommends that Grande Prairie look at other potential gas fields such as Saddle Hills and Gold Creek for additional gas supply. Northland, in its submission, appears to favor a connection of the Grande Prairie system with a proposed pipe line that may supply gas from the Gold Creek field to the Proctor and Gamble pulp mill in the vicinity of the City of Grande Prairie. The Gold Creek field is about 30 to 35 miles south-east of the City of Grande Prairie. Just where future supplies

of gas are to be obtained from for this system is a problem presently confronting the management of Grande Prairie and the answer apparently is not determinable at this time.

In order to meet the increased gas loads forecasted for the system Grande Prairie requested Quadra Engineering Limited to study the system and make recommendations on the minimum improvements and alterations that should be undertaken at this time. Quadra recommended that a 465 H.P. compressor presently located on the 6" lateral to the Atlantic Richfield wells be relocated on the main transmission line south of Sexsmith and that an additional 700 H.P. unit be purchased and installed on the main transmission line south of the Woking lateral. Grande Prairie estimates that it will spend \$209,000 in the year ended June 30, 1972 to implement the recommended and other improvements. Northland has reviewed the capital program of Grande Prairie and in its submission Northland concludes that the estimated total capital expenditures of \$17,500 in the current year and \$209,000 in the year ended June 30, 1972 are necessary for the future operation of the system and the protection of gas supplies. The Board will allow the estimated capital expenditures of \$17,500 in 1971 and \$209,000 in 1972 in determining the estimated rate base of Grande Prairie for these two years.

Grande Prairie, through their witness Richard Bedford Stokes, a chartered accountant and a vice president of Grande Prairie, submitted operating statements, rate base and rate of return statements, and working capital statements which depict the actual results for the fiscal year ended June 30, 1970 and project estimates of results for each of the fiscal years 1971 to 1974 inclusive.

The Board considers that the plant assets appearing on the audited financial statements of Grande Prairie as at June 30, 1970 are properly allowable in the rate base. The working capital allowance claimed by Grande Prairie was determined on the same basis as allowed by the Board in its 1963 decision, that is, one-eighth of total operating expenses exclusive of purchased gas and depreciation. Northland, in its submission, accepts Grande Prairie's formula for the computation of the working capital allowance. The amounts claimed by Grande Prairie are \$13,300 for 1971 and \$15,100 for 1972. The Board considers that such amounts are reasonable. Including the capital additions estimated by Grande Prairie, the estimated rate bases determined by the Board for each of the years 1971 and 1972 are as follows:

1971	\$1,470,965
1972	1,538,284

Details of the rate base are set out in Schedule "A" to this decision.

The Board considers that the estimated results of the operations for the fiscal years 1971 and 1972 should be used as a basis of measurement to determine the increased commodity charge that Grande Prairie will have to charge Northland if it is to recover its cost of service in the immediate future. Northland has accepted the unit cost of gas, operating and administrative expenses and depreciation that Grande Prairie has estimated for 1971 and 1972 but differs on the estimated volume of gas that Northland will take in each of these two years and also suggests an alternative basis for the determination of income taxes. A comparison of the estimated revenue for 1971 and 1972 from gas sales, less cost of related gas purchases, based on volumes estimated by Grande Prairie and Northland with the commodity rate at 15-3/4¢ per mcf as suggested by Northland, is as follows:

1 9 7 1

	<u>Grande Prairie</u>	<u>Northland</u>
VOLUME - MMCF	1,369	1,398
	<u> </u>	<u> </u>
DEMAND CHARGE:		
9,209 x \$2.50 x 2	\$ 46,045	
9,490 x 2.50 x 10	237,250	
9,050 x 2.50 x 2		\$ 45,200
9,480 x 2.50 x 10		<u>237,000</u>
	<u> </u>	
	\$283,295	\$282,200
COMMODITY CHARGE:		
1,369 MMCF @ 15-3/4¢	215,618	
1,398 MMCF @ 15-3/4¢		<u>220,185</u>
TOTAL SALES	498,913	502,385
COST OF GAS AT 12.09¢ M.C.F.	<u>165,556</u>	<u>169,000</u>
1971 INCOME AVAILABLE FOR EXPENSES, RETURN AND INCOME TAX	<u>\$333,357</u>	<u>\$333,385</u>

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VOLUME - MMCF	1,495	1,525
	<u> </u>	<u> </u>
DEMAND CHARGE:		
9,490 x \$2.50 x 2	\$ 47,450	
10,364 x 2.50 x 10	259,100	
9,480 x 2.50 x 2		\$ 47,400
10,260 x 2.50 x 10		<u>256,500</u>
	<u> </u>	
	\$306,550	\$303,900
COMMODITY CHARGE:		
1,495 MMCF @ 15-3/4¢	235,463	
1,525 MMCF @ 15-3/4¢		<u>240,188</u>
TOTAL SALES	542,013	544,088
COST OF GAS AT 12.39¢ M.C.F.	<u>185,167</u>	<u>188,900</u>
1972 INCOME AVAILABLE FOR EXPENSES, RETURN AND INCOME TAX	<u>\$356,846</u>	<u>\$355,188</u>

The above comparison shows that in each of the years 1971 and 1972 the resulting dollar difference is insignificant as just about the same amount of revenue is available to meet expenses, return and income tax under either estimate. However, because Northland had available to it the detailed sales records by various classes of consumers and other information not available to Grande Prairie, the Board will accept the estimates of volumes and demand charges prepared by Northland for the fiscal years 1971 and 1972 when determining Grande Prairie's revenue deficiency for each of these years.

Northland suggests to the Board that in the determination of income tax Grande Prairie should assume that 58% of its total capitalization is debt at an interest rate of 6.5% rather than 50% at an interest rate of 6.5%. Counsel for the City of Grande Prairie, in his argument, submits that only the actual income tax paid should be allowed. In its 1963 decision No. 26425 the Board considered that the capitalization of Grande Prairie, for regulatory purposes, would be debt of \$460,000 at 6½% with the remainder common equity. At that time this produced a hypothetical capitalization of approximately 50% debt and 50% common equity. The Board is not convinced that this is an unrealistic assumed capitalization and considers that it was reasonable and proper for Grande Prairie to prepare its current estimates based on 50% debt and 50% common equity. It follows that the income tax expense to be allowed to Grande Prairie must also be hypothetical as the taxable income is determined after deduction of an assumed interest

expense on the hypothetical debt. To just allow the income tax actually paid by Grande Prairie as suggested by counsel for the City would defeat the necessity of assuming a hypothetical capitalization in the first instance. Grande Prairie proposes claiming for income tax purposes the maximum capital cost allowances permitted under the Income Tax Regulations and the taxable income has been determined on this basis.

Grande Prairie submitted a schedule of estimated earned return for each of the years 1971 to 1974 inclusive after giving effect to a commodity increase to $16\frac{1}{2}\text{¢}$ per mcf effective January 1, 1971. The estimated earned rate of return for each year is as follows:

1971	-	8.57%
1972	-	9.46%
1973	-	9.24%
1974	-	9.45%
AVERAGE	-	9.19%

Northland suggests that the commodity rate should be $15\text{-}3/4\text{¢}$ per mcf effective April 1, 1971 and estimates that Grande Prairie will earn a return for 1971 and 1972 of:

1971	-	7.82%
1972	-	9.29%

Counsel for the City of Grande Prairie submits that there has been no justification shown for an increased rate of return.

Neither Grande Prairie nor Northland produced a rate of return expert to assist the Board in determining what is a

proper rate to be allowed in this instance. In its 1963 decision the Board found that an 8% rate was adequate and fair to the consumers at that time. Northland compared the estimated earned return of 9.29% that it developed for 1972, as shown above, with rates of return recently fixed by the Board for much larger utilities and, having regard to the greater risk of Grande Prairie, expressed the opinion that Grande Prairie should have a rate of return somewhat higher than the currently appropriate rate for much larger well established utilities. Northland also concludes that a 9.29% rate is reasonable. Assuming a capitalization of 50% debt and 50% common equity it is the Board's opinion that a rate of return of $9\frac{1}{4}\%$ on the rate base is fair and reasonable to Grande Prairie at the present time. The rate of return allowed will therefore be $9\frac{1}{4}\%$.

Schedule "B" to this decision sets out the estimated total deficiency at present rates together with the approximate additional amount per mcf necessary to cover the deficiency.

Concurrently with this decision the Board will issue an order fixing the commodity rate for gas supplied to Northland at 16¢ per mcf, effective on all gas delivered on and after March 1, 1971.

COSTS

Counsel for Grande Prairie suggests in his argument that the application is one of common consent to fix the amount of the increase and there being no other substantial issues between the parties each should bear its own costs.

Counsel for the City of Grande Prairie in his argument asks for costs including a reasonable amount of obtaining advice from consultants although such consultants were not present at the hearing.

Counsel for Northland is silent on the matter of costs.

Grande Prairie, with its supply and transmission facilities, and Northland, with its distribution facilities, are, from a physical point of view, associated in providing a source of natural gas to meet the needs of customers in the City of Grande Prairie and in other communities in the area. Grande Prairie and Northland, therefore, have a common interest in this regard.

The City of Grande Prairie is entitled to appear on behalf of its citizens and make representations on their behalf. The Board has always considered that this is a desirable arrangement and one which should be encouraged and that any municipality which appears and makes proper representations is entitled to reasonable costs for its efforts.

In this case the Board considers that the relationship existing between Grande Prairie and Northland is such that each should bear its own costs.

With respect to the City of Grande Prairie the Board will and does allow the sum of \$500.00, which amount

will be paid by the Applicant, Grande Prairie, and charged in its accounts as an operating expense.

DATED AT EDMONTON, in the Province of Alberta, this
Twenty-fifth day of March, A. D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) W. NOBBS

CHAIRMAN

(SIGNED) W. D. ABERCROMBIE

MEMBER

Certified a true copy.

Secretary
"

This is Schedule "A" to Decision No.30200
of the Public Utilities Board, dated the
25th day of March, A. D. 1971.

GRANDE PRAIRIE TRANSMISSION CO. LTD.
ESTIMATED RATE BASE FOR THE FISCAL PERIODS
ENDING JUNE 30, 1971 AND JUNE 30, 1972

	<u>1970</u>	<u>1971</u>	<u>1972</u>
PLANT AND EQUIPMENT	\$1,891,016	\$1,908,516	\$2,115,016
LESS: ACCUMULATED DEPRECIATION	<u>469,847</u>	<u>515,764</u>	<u>565,200</u>
	1,421,169	1,392,752	1,549,816
LAND AND LAND RIGHTS	51,550	51,550	54,050
WORKING CAPITAL	<u>11,609</u>	<u>13,300</u>	<u>15,100</u>
	<u>\$1,484,328</u>	<u>\$1,457,602</u>	<u>\$1,618,966</u>
ADD: PRIOR YEAR BALANCE		<u>1,484,328</u>	<u>1,457,602</u>
		\$2,941,930	\$3,076,568
ESTIMATED RATE BASE ALLOWED		<u>\$1,470,965</u>	<u>\$1,538,284</u>
RETURN ALLOWED THEREON 9 $\frac{1}{4}$ %		\$ 136,064	\$ 142,291

This is Schedule "B" to Decision No. 30200
of the Public Utilities Board, dated the
25th day of March, A. D. 1971.

GRANDE PRAIRIE TRANSMISSION CO. LTD.
ESTIMATED REVENUE DEFICIENCIES AT PRESENT RATES FOR
FISCAL PERIODS ENDING JUNE 30, 1971 AND JUNE 30, 1972

	<u>1971</u>	<u>1972</u>
VOLUME - MMCF	1,398	1,525
SALES AT PRESENT RATES	\$442,970	\$479,275
COST OF GAS	<u>169,000</u>	<u>188,900</u>
GROSS PROFIT	\$273,970	\$290,375
OPERATING EXPENSES	\$ 82,485	95,250
ADMINISTRATIVE EXPENSES	24,000	25,200
DEPRECIATION	<u>45,917</u>	<u>49,436</u>
	\$152,402	\$169,886
OPERATING PROFIT BEFORE INCOME TAX	\$121,568	\$120,489
PROVISION FOR INCOME TAX	<u>15,541</u>	<u>12,128</u>
NET OPERATING PROFIT	106,027	108,361
ALLOWED RETURN AT 9¼%	<u>136,064</u>	<u>142,291</u>
ESTIMATED DEFICIENCY	30,037	33,930
INCOME TAX ASSOCIATED WITH REVENUE SUFFICIENT TO COVER ABOVE DEFICIENCY	<u>33,079</u>	<u>37,366</u>
TOTAL ADDITIONAL REVENUE REQUIRED	\$ 63,116	\$ 71,296
ADDITIONAL REVENUE PER M.C.F.	4.51¢	4.67¢



File: P.U. 3751 (1)

IN THE MATTER OF "The Gas Utilities Act": and

IN THE MATTER OF "The Public Utilities Board Act": and

IN THE MATTER OF an application on a question of costs arising out of an application by Canadian Utilities, Limited to the Public Utilities Board for a revision of the rates charged to its customers for electrical energy.

D E C I S I O N

The present application regarding costs arises out of an application by Canadian Utilities, Limited to the Public Utilities Board on March 18, 1969 for a revision of the rates charged by the company for electrical energy supplied to its customers. The first phase of the hearing to determine the company's rate base and rate of return ended on July 29, 1969 and the Board issued Decision No. 29547 on October 16, 1969. (1969 P.U.R. 80 3d 385).

In that decision the Board discussed the costs of the application at page 34:

" Argument was heard by the Board as to the probable amount of costs which would be incurred by the parties appearing at the hearing. It is recognized that costs, the amount of which is unknown, will be incurred on the second phase of this application dealing with the question of setting rates. The Board considers that for the purpose of this decision an amount of \$200,000 should be used which amount, albeit estimated, will be included in the rate base and amortized at the rate of \$50,000 per year."

After the issuance of Decision No. 29547, counsel for the company and the interveners submitted statements of their costs and the Board, by Order No. 29598, fixed the costs for the phase one hearing in the amount of \$158,809.26 to be paid by the company and amortized in the manner provided in the decision. There was no disagreement among counsel over costs in the first phase hearing.

Subsequently, the company filed rate schedules of the tariffs it proposed to levy to earn the rate of return set by the Board and the Board considered the proposed rates in the second phase hearing. This hearing culminated with Decision No. 29845, in which the Board said at page 70 of the decision:

" COSTS

In its Decision No. 29547 establishing the rate base, rate of return and the amount of revenue required by C.U.L. costs of the application were estimated at \$200,000.00 to be amortized at the rate of \$50,000.00 per year. Following the issue of Decision No. 29547 application was made to the Board by the parties appearing and by Order No. 29508, dated November 5, 1969 the Board fixed the costs at \$158,800.20. This leaves a balance of \$41,190.74 available to meet costs which have been incurred by the parties as a result of the protracted hearings which have been necessary to determine the fairness and reasonableness of the rates which C.U.L. sought to impose following the issuance by the Board of its Decision No. 29547.

There is no question that the length of time which has been devoted to examining into the rates on which the Board gave interim approval on December 17, 1969 by Order No. 29060 was due, to a large degree, to the lack of cost and technical data furnished by C.U.L. in support of the rates which it sought to impose.

It appears clear that after the hearing adjourned on February 6, 1970 followed by many complaints which both the Board and C.U.L. received concerning the magnitude of the increase faced by a large number of customers, that a further review was necessary. This was recognized by C.U.L. and is amply demonstrated in the evidence given by Mr. King at the outset of the continuation of the hearing on March 31, 1970. At that time C.U.L. abandoned the rate schedules which had been designed for it by Dr. Herz and substituted revised rates. It is these rates which have been carefully examined by the Board and which, with the exception of the rates applicable to the members of the rural electrification associations, have been found by the Board to be just and reasonable.

In these circumstances the Board considers it would be manifestly unfair to include as an expense, costs recoverable through rates, that have been incurred by all parties largely because of a lack of preparation by C.U.L.

The Board, therefore, awards costs to the parties in such amount as may be agreed to by the parties, failing which as fixed by the Board and which, as to \$41,190.74, will be recoverable by C.U.L. in the manner

"set out in Decision No. 29547, and as to the balance thereof, borne by the shareholders of C.U.L."

Following this decision, the parties attempted to negotiate agreement on the amount of costs for the second phase hearing but without success. In a meeting with the Board called to resolve some of the difficulties, the Board directed counsel for the parties other than the company to send statements of their costs to counsel for the company, so that the areas of agreement and disagreement could be clarified. Further discussions among counsel failed to produce agreement and the present application was brought before the Board.

In this application counsel are not asking the Board to act as a taxing officer but are asking the Board to state the principles which should be applied in assessing costs in rate hearings so that counsel will be furnished with guidelines for negotiating agreement of the costs in the second phase hearing.

In the Board's view, the only relevant statutory provision is Section 60 of The Public Utilities Board Act which states:

"60.(1) The costs of and incidental to any proceeding before the Board, except as otherwise provided in this Act, are in the discretion of the Board, and may be fixed in any case at a sum certain or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid, and by whom the same are to be taxed and allowed.

(3) The Board may prescribe a scale under which such costs are to be taxed.

(4) The Board, may with the approval of the Lieutenant Governor in Council, prescribe the fees to be paid by local authorities or persons interested in the matters that come before the Board."

There is no other provision in the Act known to the Board which deals specifically with the costs of a utility

rate hearing, and it appears that the Board has complete discretion in the matter. The Board has never prescribed a scale for taxing costs for any kind of proceeding brought before it for reasons which will be mentioned, and the Board does not think that establishing a scale of costs for utility rate cases would be either helpful or appropriate.

In this application, counsel for the applicant company and for the various interveners presented oral argument on the manner in which costs should be determined in utility rate cases. Counsel for the company argued that costs should be determined in the same way that party-and-party costs are determined in litigation before the courts. In this approach he suggested that The Supreme Court Rules could be used by the Board as a guide.

Counsel for the interveners, in their several submissions, argued firstly that a public utility rate hearing was not comparable to a lawsuit before a court and that costs should therefore not be determined on the basis of the rules of court as suggested by counsel for the applicant. However, it was argued that if the Board decided that a utility rate hearing is comparable to litigation in the courts, then costs should be awarded on a solicitor-client basis with the amount of costs being dependent on the measure of success of the parties.

The Board is of the opinion that a utility rate hearing is in the nature of an investigation or inquiry to enable the Board to discharge its duty to "fix just and reasonable rates tolls or charges" pursuant to the provisions of The Public Utilities Board Act or The Gas Utilities Act. The procedure used in the conduct of a rate hearing is similar to the procedure of a court in litigation between parties, but the purposes of a lawsuit and a rate hearing, in the Board's view, are not similar. Litigation between parties

under the adversary system is in the nature of a contest to determine issues between opposing parties and costs are usually awarded by the Court to a successful litigant. In a rate hearing, the procedure used in an adversary contest with interested parties being represented by counsel and witnesses giving testimony under oath is used to obtain the information the Board requires, but it is not mandatory for the Board to follow court procedure as the Board is empowered to set its own procedure. Section 33 of The Public Utilities Board Act provides:

"33. All hearings and investigations before the Board shall be governed by rules which may be adopted by the Board, and in the conduct of hearings and investigations before it the Board is not bound by the technical rules of legal evidence."

It follows that costs arising out of a utility rate hearing must be decided on a different basis than the success or lack of success of a party as in litigation.

The distinction between litigation and a proceeding before a public utility board was discussed in a case referred to by counsel: In re Northern Engineering and Development Company and Phillip; In re Municipal and Public Utility Board (1930) - 1 W.W.R. 615. The constituting statute of the Manitoba board contained a provision similar to Section 60 of The Alberta Statute. In an appeal from a decision of the Manitoba board refusing to allow costs in an application (not a utility rate hearing), Trueman J.A. of the Manitoba Court of Appeal in delivering the majority judgment said at p. 618:

"Proceedings before the Board belong to a different category and are necessarily dealt with from a point of view that has no place in litigation between parties. The status and risks of suitors in an action are fixed by practice and authority. No rule has been laid down by the Board that persons appearing by counsel before the Board shall, subject to the Board's discretion, have costs in event of their success or pay costs in event of their failure.

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"Whether such a rule should be adopted or not is a matter wholly for the Board. In the meantime, the matter is left by sec. 55 in the Board's absolute discretion, untrammelled by the principles which necessarily control the discretion of the Court or a Judge. See Local Government Board v Arlidge (1915) A.C. 120".

In the Board's view the above statement is definitive of this Board's position under Section 60 of The Public Utilities Board Act. It remains to be stated that this Board has not laid down any general rule that persons appearing by counsel shall, subject to the Board's discretion, have costs in the event of their success, or pay costs in the event of their failure. The Board sees no reason for the adoption of such a rule in any proceeding brought before it, and especially not for utility rate hearings.

Counsel for the company suggested that costs should be awarded on a party-and-party basis following the Board's Decision No. 28630 in re City of Calgary v Graham et al. That decision arose from proceedings taken before the Board to determine the compensation for land taken pursuant to The Expropriation Procedure Act. In proceedings before the Board to determine compensation, where the parties are represented by counsel, the Board has followed the practice of awarding costs on a party-and-party basis, using The Supreme Court Rules as a guide. This practice facilitates agreement between counsel as to costs and, as such proceedings are usually in the nature of a contest with the main issue being the quantum of compensation, the Board considers it an appropriate method of determining costs under such circumstances. However, no rule has been laid down that costs will be determined on that basis in all such proceedings and the Board will exercise its discretion as necessary in a

particular case. As explained earlier in this decision, the Board is of the opinion that a utility rate hearing is not in the nature of a contest. Consequently Decision No. 28630 has no application to the matter of costs now being considered.

In earlier decisions of this Board in rate proceedings, the Board has not formulated or followed any rules in determining the amounts and the manner of paying costs; the determination being dependent upon what the Board thought was reasonable in each case. A study of the manner in which costs are determined by other utility regulatory agencies indicates that the same general approach is widely used. The test of reasonableness is largely a matter of judgment subject to variations as the circumstances from one utility case to another warrant. Relevant to the matter of costs, it is helpful to consider, generally the roles of the parties to a utility rate hearing.

A hearing of an application to increase a utility company's rates is a highly specialized and technical enquiry into the financial and economic aspects of the utility company which is often of long duration. The evidence given at the hearing is prepared and presented by highly qualified expert witnesses in accounting, finance, economics and utility analysis. As the purpose of the hearing is to arrive at rates which will be just and reasonable for several years beyond the time when the hearing is held, much of the testimony by experts is devoted to the consideration of projections and forecasts of the utility business and economic trends. This is largely an area of judgment and opinion rather than of fact.

The Board believes it is essential to hear opposing

and varying opinions of expert witnesses for the proper determination of the complex issues which arise in lengthy and involved hearings like those which were held in the company's application. In such hearings, the function of presenting expert witnesses whose opinions are at variance with the company's witnesses who support an application, rests with interested parties who oppose the company's application. Without the active participation of interveners represented by able counsel and without having the benefit of the testimony of expert witnesses whose qualifications are equal to those presented by the company, the Board would have an almost impossible task to adjudicate fairly.

Usually, in utility rate cases, costs are fixed by the Board in reasonable amounts which are agreed to by the parties. These costs are paid for by the applicant company and the Board directs that the costs can be recovered by the company over a period of time in its consumer rates. The Board considers that this method of recovering the costs is fair and reasonable because it is the consumers who ultimately benefit from the continuation of the company's service and from the contribution of the intervening parties to the adjustment of fair and proper rates. The period for recovering the costs ensures that the costs of hearings are not made burdensome. If interested parties to a utility rate hearing were required to bear their own costs, the financial strain would be prohibitive and municipalities and other groups of consumers and interested parties would be unable to participate to the extent required for a full and complete enquiry into a utility's application. This would result

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in utility hearings being one sided affairs and the Board would be deprived of the benefit of having both sides of the case presented with equal vigor.

However, all this is not to say that a utility proceeding before this Board is tantamount to granting a license to an interested party to incur costs without limit whether by counsel fees or disbursements for expert witnesses. In the Board's view, all costs must meet the test of reasonableness.

In the utility case in question, difficulties arose in the company's presentation of its case which resulted in lengthier hearings to determine the reasonableness of the rates which the company wished to charge. In Decision No. 29547, a portion of which has been quoted above, the Board decided that the company would not be permitted to recover from its customers any costs exceeding \$41,190.74 applicable to the second phase which had been provided for in Decision No. 29547, also as quoted above.

If the Board is required to fix the costs in the second phase application, should counsel be unable to agree, the Board will have regard to several considerations. Firstly, the Board does not consider that any agreement as to counsel fees determined on an hourly basis in earlier proceedings of the company's application, or any other similar application is in any way binding on the Board so that fees may not be fixed on a lump sum basis. Proper disbursements and expert witness fees will be allowed but the Board in all cases will have regard to the reasonableness of the charges. While the Board has found that the company was primarily responsible for the protracted length of the hearings, the Board will consider whether this was contributed to by the interested parties,

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either through the inexperience or error of counsel or through unnecessary testimony by their expert witnesses. In that respect the Board will also consider the fact that in the preparation of their cases, interested parties must obtain their information from the company. If the company chooses to change information that has been relied upon for preparation, interested parties have to spend additional time to meet the new information. Finally, on both sides, the Board will have regard to the fact that the hearings were held for the first electric utility rate application in this province and that the lack of a precedent decision by this Board may have had a bearing. However, that fact would have to be considered along with the fact that there is no lack of precedents elsewhere. The company's officers are familiar with other kinds of utility rate cases, the basic principles and procedures of which, in the Board's view, are very similar.

Failing the agreement of counsel as to costs, within a reasonable period of the date hereof, costs will be fixed in such amount as may be determined by the Board.

DATED at the City of Edmonton, in the Province of Alberta, this 29th day of March, A.D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) K. J. LEATHEM

MEMBER

(SIGNED) W. D. ABERCROMBIE

MEMBER

Certified a true copy,

Secretary.





IN THE MATTER OF "The Alberta Gas Trunk
Line Company Act":

AND IN THE MATTER OF "The Public Utilities
Board Act":

AND IN THE MATTER OF the complaints of Trans-
Canada Pipelines Limited; Alberta & Southern
Gas Co. Ltd.; Westcoast Transmission Company
Limited; and Westcoast Transmission Company
(Alberta) Limited:

AND IN THE MATTER OF the complaints of the
Consumers' Gas Company; Northern and Central
Gas Corporation Limited; Saskatchewan Power
Corporation; and Union Gas Company of Canada
Limited:

APPEARANCES:

A. F. Moir, Esq., Q.C.	:	For The Alberta Gas Trunk
G. R. Forsyth, Esq.	:	Line Company Limited
	:	
R. A. MacKimmie, Esq., Q.C.	:	For Alberta & Southern Gas
	:	Co. Ltd. and Westcoast
	:	Transmission Company Limited
	:	
G. A. C. Steer, Esq., Q.C.	:	For Trans-Canada Pipelines
	:	Limited
	:	
R. J. Gibbs, Esq.	:	For Consumers' Gas Company;
R. A. Mackie, Esq.	:	Union Gas Company of Canada
	:	Limited; Northern and Central
	:	Gas Corporation Limited and
	:	Saskatchewan Power Corporation
	:	
E. G. Hughson	:	For the Attorney General of
	:	the Province of Alberta

D E C I S I O N

By Notice of Motion dated February 26, 1971, The
Alberta Gas Trunk Line Company Limited (hereinafter referred to
as "Trunk Line") made application to the Board seeking the
reopening of a hearing which the Board had concluded on
January 21, 1971 having reference to complaints filed with the
Board by Trans-Canada Pipelines Limited (hereinafter referred
to as "Trans-Canada"); Westcoast Transmission Company (Alberta)
Limited (hereinafter referred to as "Westcoast Alberta");
Alberta & Southern Gas Co. Ltd. and Westcoast Transmission

Company Limited (hereinafter referred to as "Southern and Westcoast"), sometimes collectively referred to as the "complaining group). The Notice of Motion reads:

" TAKE NOTICE that an application will be made before the Public Utilities Board in the Board Room at its offices, Devonian Building, Edmonton, Alberta on Monday, the first day of March, 1971 at the hour of 4:00 o'clock in the afternoon.

AND FURTHER TAKE NOTICE that at that time an application will be made on behalf of the Alberta Gas Trunk Line Company Limited to reopen the hearing into the justness and reasonableness of the rates, tolls and charges of The Alberta Gas Trunk Line Company Limited for the purposes of dealing with the complaints filed before the Public Utilities Board by The Consumers' Gas Company, Northern and Central Gas Corporation Limited, Saskatchewan Power Corporation and Union Gas Company of Canada, Limited;

AND FURTHER TAKE NOTICE that the Public Utilities Board will be requested to allow Counsel for The Consumers' Gas Company, Northern and Central Gas Corporation Limited, Saskatchewan Power Corporation and Union Gas Company of Canada, Limited to introduce such further and other evidence as he may desire with respect to the specific complaints of The Consumers' Gas Company, Northern and Central Gas Corporation Limited, Saskatchewan Power Corporation and Union Gas Company of Canada, Limited, and then to recall any and all witnesses who gave evidence at the said hearing and cross examine same with respect to matters raised in complaints of The Consumers' Gas Company, Northern and Central Gas Corporation Limited, Saskatchewan Power Corporation and Union Gas Company of Canada, Limited and to follow such further procedures as may be necessary in the Board's opinion to allow it to deal with the specific complaints of The Consumers' Gas Company, Northern and Central Gas Corporation Limited, Saskatchewan Power Corporation and Union Gas Company of Canada, Limited."

The events which gave rise to this application have reference to complaints filed with this Board by Trans-Canada; Westcoast Alberta; and Southern and Westcoast pursuant to the provisions of The Alberta Gas Trunk Line Company Act, cap. 37, S.A. 1954, particularly as to section 30 thereof as amended by Cap. 5, S.A. 1970.

The complaining group referred to have contracts with Trunk Line which provides for the transportation by Trunk Line

of natural gas in Alberta from the areas of the Province where it is produced to points on the boundaries of the Province of Alberta where it enters transmission facilities of the complaining group. The contracts set out, among other things, the basis upon which the transportation charges are to be calculated, which charges include a rate of return on the capital cost of the facilities employed by Trunk Line in the transportation of the gas. It is not necessary in this decision to go into detail with respect to the contracts other than to say the complaints made to the Board by the complaining group were with respect to the rate of return imposed by Trunk Line on July 1, 1970.

Preliminary matters with respect to the complaints were spoken to on September 10, 1970 and the Board, at that time, expressed its concern with respect to the language used in section 30 of the Act and invited counsel to submit written argument on the following two points:

- (a) Does the language "determine the justness and reasonableness of any rate, toll or charge" as used in section 30, sub-section (3) empower the Board to determine the justness and reasonableness of a rate of return fixed by the company about which the complaints are made.
- (b) Does the language "upon complaint of an interested party" and "parties interested", as used in section 30, sub-section (2), include parties other than the complaints, and if so, who.

Counsel for all parties declined this invitation.

Further matters were spoken to on October 8, 1970 and the matter of the complaints finally came on for hearing on November 17, 1970.

Among the parties to the hearing of the complaints were Consumers' Gas Company; Union Gas Company of Canada Limited; Northern and Central Gas Corporation Limited and Saskatchewan Power Corporation (referred to herein collectively as "the consumers group"). The consumers group are customers of Trans-Canada, one of the members of the complaining group, and have gas purchase contracts with Trans-Canada which provide for delivery of gas from Trans-Canada's facilities located in

provinces of Canada other than the Province of Alberta, for distribution and sale in such provinces.

On October 20, 1971 each member of the consumers group filed complaints with the Board under section 30 of The Alberta Gas Trunk Line Company Act, seeking a determination by the Board of the justness and reasonableness of the rates, tolls and charges of Trunk Line and for an order of the Board varying the said rates, tolls or charges of Trunk Line to the degree necessary to fix the same at such level as the Board may determine as being just and reasonable.

By letters dated October 22, 1970 addressed to the solicitors for each member of the consumers group the Board rejected these complaints. The reasons given by the Board for the rejection thereof are contained in each letter as follows:

The Board has ruled in the preliminary hearing held in respect of the complaints of Alberta and Southern Gas Co. Ltd.; Westcoast Transmission Company Limited; Westcoast Transmission Company (Alberta) Ltd. and Trans-Canada Pipe Lines Limited, that under the provisions of Section 30 of The Alberta Gas Trunk Line Company Act the Board can on these applications only determine the justness and reasonableness of the annual rate of return of 8 3/4% on the net investment rate base fixed by the Board of Directors of The Alberta Gas Trunk Line Company in the Resolution of the Board of Directors passed on the 26th day of June, 1970. Under this provision the Board takes the view that it merely acts as an arbitrator to deal with the complaint concerning such return.

In the hearing of the above complaints, which will commence on November 17, 1970, (the member of the consumers group to whose solicitors the letter is addressed), as the Board has ruled, will be entitled to participate as a "party interested" in association with the complainant, Trans-Canada Pipe Lines Limited, with whom it has a contractual relationship. Trans-Canada, and other complainants, of course, have a direct contractual relationship with The Alberta Gas Trunk Line Company. The arrangement which the Board has made in associating parties interested who do not have contracts with The Alberta Gas Trunk Line Company with complainants who have contracts with such party and with The Alberta Gas Trunk Line Company, is for the purpose of an orderly hearing and not to prevent a party interested from being represented by its own counsel.

As outlined during the course of the preliminary matters dealt with on September 10 and October 8, 1970, as contained in the transcript of the proceedings, (the member of the consumers group) is entitled, as a party

interested, to be an intervener associated with the complainant Trans-Canada Pipe Lines Limited with which company it has a contract.

The effect of this ruling is, that while the Board has ruled that a party who has no contract with The Alberta Gas Trunk Line Company and whose operations are outside the Province may participate in the hearing to the extent of being associated with one of the complainants, the Board has decided that it does not have jurisdiction to hear the particular complaint of such a party.

Following this rejection the consumers group filed an appeal with the Appellate Division of the Supreme Court of Alberta and on February 12, 1971 Allen, J.A. delivered the judgment of the Court. Briefly the judgment found the Board in error in rejecting the complaints of the consumers group and found them to be "interested parties" within the meaning of section 30 of the Act and directed that the Board should receive and deal with the appellants' (the consumers group) complaints. (1971) 3 W.W.R. 37

As a result of this judgment Trunk Line now asks that the hearing of the complaints of Trans-Canada, Westcoast Alberta and Southern and Westcoast be reconvened to afford an opportunity to the consumers group to have their complaints heard and dealt with along with the other complaints on which the Board has heard evidence.

Counsel for Trunk Line expresses concern that the proceedings already completed with respect to the complaining group may now be void because the consumers group were prejudiced by only being permitted to participate in the hearing as an associate of the members of the complaining group.

Allen, J.A. refers to this in the course of his judgment, saying:

" I might perhaps at this point add that the Board's gesture in permitting the appellants 'to participate in the hearing to the extent of being associated with one of the complainants (the pipe line companies)' appears to be of no value to the appellants as it was stated that the pipe line companies were either not interested in pursuing the line of complaint adopted by the appellants, or were not interested in pursuing it to the extent that the appellants desire to do."

In the Board's view, however, the position of the consumers

group is expressed in the closing paragraph of the judgment in which His Lordship says:

" I am therefore of the opinion that the appeal from the Board's decision should be allowed, and the Board should be directed to receive and deal with the appellants' complaints."

This can only mean that the members of the consumers group are now at liberty to file complaints with the Board and the Board, to use the language of section 30, may determine the justness and reasonableness of the rates charged by Trunk Line. No member of the consumers group has filed a complaint since the judgment issued. Counsel for the group informed the Board, on speaking to the Notice of Motion on this application, that he had been instructed by Union Gas, Northern & Central Gas and Consumers' Gas Company that they were withdrawing their complaints. He said, however, that he had not been so instructed by the Saskatchewan Power Corporation. There is no doubt that the Court has established that the members of the consumers group, and in fact any interested party may, as the Court has directed, be permitted, under the provisions of section 30, to file complaints with the Board. Whether or not they do so is a matter for such parties to decide. While it may be convenient for Trunk Line to ask that the complaints be heard together, and this might be the convenient and practical way of dealing with them, the Board can only deal with complaints that have been filed. The Board considers that it has not the jurisdiction to direct the members of the consumers group to now file complaints.

Finally, the Board considers that Trunk Line does not have the right under the circumstances outlined above to ask the Board to reconvene the hearing. To do so in these circumstances would, as counsel for Southern and Westcoast points out, prejudice the position of the complaining group to the original application who are entitled to have their complaints heard.

Accordingly, therefore, the Board dismisses the applica-

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tion of Trunk Line with costs to be paid by Trunk Line to the parties appearing on this application in such amount as may be agreed to by the parties, failing which as fixed by the Board.

DATED AT EDMONTON, in the Province of Alberta, this 13th day of April, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. NOBBS
CHAIRMAN

(SIGNED) W. D. ABERCROMBIE
MEMBER

(SIGNED) H. A. WILLIAMS
ACTING MEMBER

Certified a true copy.

Acting Secretary

NO. 30206



File: Ex-Mun-52-1

IN THE MATTER OF "The Municipal
Government Act":

AND IN THE MATTER OF "The
Expropriation Procedure Act":

AND IN THE MATTER OF an application
to the Public Utilities Board by
the County of Wetaskiwin No. 10
for an order declaring the amount
of money payable to Thomas Cartier
and Helen Cartier for certain lands
expropriated by the County.

BETWEEN:

COUNTY OF WETASKIWIN NO. 10

Applicant

- and -

THOMAS CARTIER AND HELEN CARTIER

Respondents

- and -

ELIZABETH DUFVA, WINFIELD RURAL
ELECTRIFICATION ASSOCIATION LIMITED
AND DOME PETROLEUM LIMITED

Respondents

APPEARANCES:

R. A. Cawsey, Esq., Q.C.	:	For the County of Wetaskiwin
	:	No. 10
	:	
Thomas Cartier and Helen	:	
Cartier	:	On their own behalf

D E C I S I O N

This is an application by the County of Wetaskiwin
No. 10 (hereinafter referred to as "the County") for an order
declaring the amount of money payable to Thomas Cartier and
Helen Cartier (hereinafter referred to as "the Owners") for
a strip of land 25.5 feet more or less in width along the
north boundary of the North East Quarter of Section 8,
Township 46, Range 4, West of the 5th Meridian, containing
1.54 acres more or less, which the County requires for road

widening purposes and which is more particularly described as follows:

All that portion of road widening (2.54 acres), as shown on registered road Plan No. 3551 R.S., excepting thereout the area of road widening (1.00 acres), as shown on cancelled road Plan No. 6363 K.S., leaving 1.54 acres expropriated land.

Notice of its intention to expropriate the lands was given to the Owners by a notice dated November 17, 1969, in which the County offered the Owners compensation in the amount of three times the highest assessed acre in the said quarter section for each acre, or portion thereof, taken and to remove and rebuild the fence on the north boundary of the property to a standard not less than it was at that time. A photo copy of the most recent assessment sheet covering the subject lands, duly filed as Exhibit 1-8, indicated that the highest value per acre was \$14.00.

The Owners on the other hand requested that they be paid compensation at the rate of \$50.00 per acre for the strip of land taken and that a fence consisting of new treated or tamarack posts and four strands of new barbed wire be constructed on the new boundary line of the quarter. It was noted that the difference in the total compensation offered and requested amounted to approximately \$12.00. Near the conclusion of the hearing Counsel for the County advised that the County was prepared to pay the sum of \$50.00 per acre for the land acquired from the Owners and an order will issue accordingly.

With regard to the new fence, the Board was advised that, when the fence was moved the same barbed wire was used

but that all broken or damaged posts in the old fence were replaced with new tamarack posts. The Owners conceded that the fence that the County had moved after the road widening was in better condition than it was prior to its being moved. Accordingly no award will be made with respect to damages claimed for new fencing.

The Owners will, of course, be entitled to be paid a fee for attendance and mileage travelled to attend the hearing.

Concurrently with this decision an order will issue declaring the amount of money payable by the County to the Owners herein.

DATED at the City of Edmonton, in the Province of Alberta, this 2nd day of April, A.D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) K. J. LEATHEM

MEMBER

(SIGNED) H. A. WILLIAMS

ACTING MEMBER

Certified a true copy.

Secretary





Files: Ex-Co-73-40
Ex-Co-73-43
Ex-Co-88-123
Ex-Co-88-126

IN THE MATTER OF "The Pipe Line
Act": and

IN THE MATTER OF "The Expropriation
Procedure Act": and

IN THE MATTER OF an application on
a question of costs arising out of
two applications by Dome Petroleum
Limited to the Public Utilities
Board pursuant to the provisions
of The Expropriation Procedure Act.

D E C I S I O N

This application arises out of the disagreement of counsel over the quantum of certain expert witness fees payable by Dome Petroleum Limited as part of the costs awarded to the owners of parcels of land which were the subject of expropriation proceedings for pipe line purposes. The parcels involved belong to different owners and there were separate unrelated applications made to this Board, although the same counsel appeared for the owners and Dome in each application. The proceedings referred to resulted in the Board issuing Decision No. 29896, dated June 30, 1970 and Decision No. 29729, dated February 10, 1970.

Counsel for Dome argued that several expert witness charges were too high considering the weight given to their testimony in the Board's decisions on the applications in which they were called. Counsel for the owners who were awarded costs argued that the owners should be indemnified against all costs that are incurred in the presentation of their cases, bearing in mind that owners are compelled to meet the testimony of expert witnesses called by the expropriating company on the various facets of compensation.

The Board's authority to fix costs in proceedings brought under The Expropriation Procedure Act, R.S.A. 1970, chap. 130,

is derived from section 48 (1) of the Act which gives the Board the same powers it has under Part I of The Public Utilities Board Act except when the provisions of the two Acts conflict. Section 60 of The Public Utilities Board Act provides:

"60.(1) The costs of and incidental to any proceeding before the Board, except as otherwise provided in this Act, are in the discretion of the Board, and may be fixed in any case at a sum certain or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid, and by whom the same are to be taxed and allowed.

(3) The Board may prescribe a scale under which such costs are to be taxed.

(4) The Board may, with the approval of the Lieutenant Governor in Council, prescribe the fees to be paid by local authorities or persons interested in the matters that come before the Board."

Recently, in Decision No. 30202, dated March 29, 1971, the Board considered its jurisdiction under this section on a question of costs in a utility rate case. In that decision, the Board referred to its discretion to fix costs as compared with the position of a court in litigation between parties on page 5 as follows:

" The distinction between litigation and a proceeding before a public utility board was discussed in a case referred to by counsel: In re Northern Engineering and Development Company and Phillip; In re Municipal and Public Utility Board (1930) - 1 W.W.R. 615. The constituting statute of the Manitoba board contained a provision similar to Section 60 of The Alberta Statute. In an appeal from a decision of the Manitoba board refusing to allow costs in an application (not a utility rate hearing), Trueman J.A. of the Manitoba Court of Appeal in delivering the majority judgment said at p. 618:

' Proceedings before the Board belong to a different category and are necessarily dealt with from a point of view that has no place in litigation between parties. The status and risks of suitors in an action are fixed by practice and authority. No rule has been laid down by the Board that persons appearing by counsel before the Board shall, subject to the Board's discretion, have costs in event of their success or pay costs in event of their failure.

"Whether such a rule should be adopted or not is a matter wholly for the Board. In the meantime, the matter is left by sec. 55 in the Board's absolute discretion, untrammelled by the principles which necessarily control the discretion of the Court or a Judge. See Local Government Board v Arlidge (1915) A.C. 120'

In the Board's view the above statement is definitive of this Board's position under Section 60 of The Public Utilities Board Act. It remains to be stated that this Board has not laid down any general rule that persons appearing by counsel shall, subject to the Board's discretion, have costs in the event of their success, or pay costs in the event of their failure. The Board sees no reason for the adoption of such a rule in any proceeding brought before it, and especially not for utility rate hearings."

In another decision, No. 28630, which involved the determination of costs arising out of a matter of compensation for property expropriated by a municipality, the Board awarded costs on a party and party basis as opposed to solicitor and client basis. Referring to that decision, the Board, in Decision No. 30202 said:

" Counsel for the company suggested that costs should be awarded on a party-and-party basis following the Board's Decision No. 28630 in re City of Calgary v Graham et al. That decision arose from proceedings taken before the Board to determine the compensation for land taken pursuant to The Expropriation Procedure Act. In proceedings before the Board to determine compensation, where the parties are represented by counsel, the Board has followed the practice of awarding costs on a party-and-party basis, using The Supreme Court Rules as a guide. This practice facilitates agreement between counsel as to costs and, as such proceedings are usually in the nature of a contest with the main issue being the quantum of compensation, the Board considers it an appropriate method of determining costs under such circumstances. However, no rule has been laid down that costs will be determined on that basis in all such proceedings and the Board will exercise its discretion as necessary in a particular case. As explained earlier in this decision, the Board is of the opinion that a utility rate hearing is not in the nature of a contest. Consequently Decision No. 28630 has no application to the matter of costs now being considered."

The preceding remarks are relevant to the present application. In Decision No. 30202 the Board summed up

its remarks by saying that in its view, all costs must meet the test of reasonableness. The Board is of the same opinion in the present application. The Board does not accept the contention that in proceedings to determine the compensation payable to a land owner in an expropriation, the owner should be completely protected from or indemnified against the expense of retaining expert witnesses without regard to such matters as: the reasonableness of the fees charged, the relevancy of the testimony presented, the number of witnesses called and other proper consideration.

To follow such a practice inevitably would lead to abuse and the Board would fail in its duty to exercise its discretionary powers granted under section 60. At the same time it is recognized that in compensation proceedings arising out of the expropriation of land, the owner of the land has the onus of proving his claims under various heads of compensation. The owner is put in the position where expert witnesses should be retained, mainly because the value of land not recently exposed to the market is usually a matter of opinion and opinion evidence should be presented by a qualified expert if it is to be given due weight in the determination of value. These remarks have equal application to some items of damage in which the Board requires the opinion of an experienced and expert witness to arrive at a fair amount.

Counsel for Dome suggested that costs for expert witness fees should be determined on the basis of the weight given to the witnesses' testimony in the Board's decision. In the Board's view, this is not a sound basis for determining such costs either. It was mentioned earlier that in the

kind of compensation case under discussion, the value of one or more items for which compensation is payable is largely a matter of opinion because of the absence of factual evidence which could provide the foundation for determining a particular value. In arriving at a conclusion as to the value of such an item where there are two opposing experts, the Board may follow the opinion of one expert witness rather than the opinion of the other, or it may determine a value which follows neither opinion.

In any case, it would be inaccurate to assume that the testimony given by an expert does not assist the Board because the Board does not agree with the expert's opinion in its decision. In the process of arriving at a determination of value of an item where value is largely opinion, it would be most difficult for the Board to adjudicate fairly without the benefit of hearing opinions from both sides. It is difficult to describe the quality of expert testimony which renders the greatest assistance to the Board but speaking generally, the Board obtains the greatest benefit from expert testimony which is relevant to the issues, is within the area of the expert's special knowledge and experience and is presented in the nature of a professional opinion with a minimum of bias towards the party on whose behalf the witness is called.

In one of the proceedings, Dome Petroleum Limited and Tomas Opalinski et al, Cyril Gladstone Hampson et al, the only matter of disagreement is over the amount of costs to be paid in respect of Mr. Caithness, a qualified real estate appraiser who testified on behalf of the Respondents. Mr. Caithness did not prepare an appraisal report of the

properties involved in the expropriation and the thrust of his testimony was directed towards the potential growth of the south west portion of the City of Edmonton and the implications of this potential on the Respondents' lands. Much of this testimony was comment on Exhibit 3, the General Plan of the City of Edmonton. The Board would have preferred Mr. Caithness to have presented the usual appraisal report showing a detailed analysis of property sales in the area and consideration of other indices of value of the properties in question. Nevertheless, Mr. Caithness' opinions were in a broad sense related to his special knowledge and did assist the Board to some degree. The Board will allow the sum of THREE HUNDRED DOLLARS (\$300.00) as costs for Mr. Caithness' witness fee.

In the other proceeding, Dome Petroleum et al, Swan Swanson Holdings et al, the matter has not proceeded beyond the granting of an interim order and involved litigation has proceeded to the Supreme Court of Canada. The outcome of this litigation will not be known until some future date and no one can say when the matter will come before the Board for a final order.

Counsel have been able to agree on all items of costs except for the fees for three expert witnesses. The amount of these fees are probably not of special significance compared with the total costs and no mention was made by counsel of the necessity of an award in the nature of interim costs. Counsel may also wish to have the opportunity to enter into further negotiations for settlement of the disputed items, in the light of this decision. In these circumstances, the Board will not fix any unsettled costs of the interim hearing until an application is made for

a final order.

Each party will bear its own costs in this application.

DATED at the City of Edmonton, in the Province of Alberta, this 7th day of May, A.D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) K. J. LEATHEM

MEMBER

(SIGNED) W. D. ABERCROMBIE

MEMBER

Certified a true copy,

Secretary.



IN THE MATTER OF "The Expropriation
Procedure Act":

AND IN THE MATTER OF "The Water
Resources Act":

AND IN THE MATTER OF applications by
Calgary Power Ltd. for orders amend-
ing the terms of Order No. 26114
dated April 1, 1963 and Orders Nos.
26115 and 26116, dated March 8, 1963:

BETWEEN:

CALGARY POWER LTD.

Applicant

- and -

EDWIN REAVLEY BOYD and
FARM CREDIT CORPORATION

Respondents

- and -

ELSA MARGUERITE COOPER,
JAMES W. GRAHAM and HOME
OIL COMPANY LIMITED

Respondents

- and -

LLOYD DEAN NELSON, BRUCE
ANDREW NELSON and THE
PRUDENTIAL INSURANCE COMPANY
OF AMERICA

Respondents

APPEARANCES:

C. D. O'BRIEN, Esq.	:	for Calgary Power Ltd.
	:	
L. D. Nelson, Esq.	:	on his own behalf
	:	
E. R. Boyd, Esq.	:	on his own behalf

D E C I S I O N

These applications have reference to three applications
made to the Board by Calgary Power Ltd. (hereinafter referred
to as "Calgary Power") seeking amendments to Orders Nos. 26114,

26115 and 26116 which the Board issued in 1963 pursuant to the provisions of The Water Resources Act, cap. 362, R.S.A. 1955 and The Expropriation Procedure Act, cap. 30, S.A. 1960, as they were at that time and which, under The Expropriation Procedure Act, the Board was authorized to grant.

Each of the orders which the Board issued granted to Calgary Power the right to construct certain electrical transmission facilities on strips of land owned by the Respondents. With the exception of the description of the facilities to be constructed on each strip, the rights granted to Calgary Power under the orders are the same with respect to each order.

The rights granted to Calgary Power consisted of:

"1. The Applicant requires and is hereby granted the right, license, privilege and easement of a right-of-way (the right-of-way described in each order) (hereinafter called 'the right-of-way') for the erection, installation, construction, operation, maintenance, inspection, patrol, removal, replacement, reconstruction, relocation, alteration and repair of the Applicant's electrical transmission lines and all wire, conductors, apparatus, poles, standards, structures, equipment, guy wires or works and appurtenances as may be necessary or convenient in connection therewith for the transmission, conveyance and distribution of electrical energy within, upon or over the said lands together with the right of ingress to and egress from the said right-of-way for its servants, agents, vehicles, supplies, machinery and equipment for all purposes necessary or incidental to the exercise and enjoyment of such rights, subject to the following terms, restrictions and conditions:

(a) the said right, license, privilege, and easement shall be for so long a period as the Applicant, its successors or assigns desires and continues to maintain and operate its electrical transmission lines across the said right-of-way;

(b) the Applicant shall have the immediate and continual right to enter upon the said right-of-way and to do thereon all things necessary for the construction, erection and maintenance thereon of:

(i))
(ii)) (here referred to are the
) facilities described in
) each order)
)

all forming part of its said electrical transmission lines:

- " (c) the Applicant, without paying any additional compensation for the right-of-way, shall have the right to remove the towers, fixtures or equipment and substitute other towers, together with fixtures or equipment thereon;
- (d) the said right-of-way shall not be fenced by the Applicant and the owner for the time being of the lands shall have the right of free access to, and use of, the lands covered by the said right-of-way except only insofar as the same may be necessary for the aforesaid purposes of the Applicant;
- (e) the Applicant shall have the privilege and right to keep the said right-of-way free from brush, trees, damaging growth, water in dangerous quantities and other obstructions, subject, however, to the exercise of such rights in a good and workmanlike and reasonable manner;
- (f) the Applicant shall be liable and responsible to:
- (i) indemnify the owner of the said lands against all actions, claims and demands that may be lawfully brought or made against such owner by reason of anything done by the Applicant, its tenants, servants, workmen, employees or licensees, in the exercise or purported exercise of the aforesaid rights, licenses, liberties, privileges and easement;
 - (ii) compensate the owner of the said lands for damages done to any crops, buildings, fences, merchantable timber and livestock of such owner which may be growing, erected, installed or running upon the said right-of-way and which may be injured or damaged by reason of the construction, installation and maintenance of the said electrical transmission lines and for any additional loss of the use of land or inconvenience caused by the substitution of the towers, fixtures or equipment.
- (g) the Applicant shall have the right to provide gates, and shall furnish each of the same with a good and sufficient lock, in each and every fence now or hereafter erected or constructed across the said right-of-way, such gates to be of sufficient width to admit the passage of any ordinary vehicle;
- (h) upon discontinuance of the use of the said right-of-way for the purposes aforesaid, the Applicant shall cause the said works to be removed and all holes caused thereby to be filled and the said right-of-way lands left in good condition;

"all of which said rights, terms, restrictions, and conditions shall be deemed to be, and shall be, covenants running with the lands and enure to the benefit of, and be binding upon, the owner for the time being of the said lands and the Applicant or its successors or assigns for the time being in ownership or enjoyment of the aforesaid right-of-way."

The facilities authorized by the Board to be constructed on each parcel were as follows:

Order No. 26114 - the Cooper land:

- (i) Two (2) Type C Towers (steel towers), and
- (ii) Cross arms, transmission wires and fixtures or equipment on the said towers on, over and above the said right-of-way.

Order No. 26115 - the Nelson land:

- (i) One (1) Type D $\div$ 10' Tower (steel tower), and One (1) Type C Tower (steel tower);
- (ii) Cross arms, transmission wires and fixtures or equipment on the said towers on, over and above the said right-of-way.

Order No. 26116 - the Boyd land:

- (i) One (1) Type C Tower (Steel tower), and One (1) Type C $\div$ 10' Tower (steel tower);
- (ii) Cross arms, transmission wires and fixtures or equipment on the said towers on, over and above the said right-of-way.

Cap. 38, S.A. 1970 transferred the jurisdiction held by the Board with respect to companies authorized to expropriate property to the Board of Arbitration appointed under The Right of Entry Arbitration Act, the effective date being July 1, 1970 and applying to all expropriation proceedings commencing on and after that date. Calgary Power is one of the companies affected by this amendment.

The applications herein were filed with the Board on January 4, 1971 and, with the exception of the names of the various Respondents, the number of the originating order issued

by the Board in 1963 and the structures authorized in such order, each application reads as follows:

APPLICATION FOR A EASEMENT OF AN ORDER

CALGARY POWER LTD., (hereinafter referred to as 'the Applicant'), a body corporate with head office at the City of Calgary, in the Province of Alberta, which:

- (a) is a licensee, and operates in the said Province an undertaking, under and pursuant to The Water Resources Act (hereinafter referred to as 'the Authorizing Act');
- (b) has, pursuant to the Authorizing Act, obtained from the Minister thereunder, his Certificate dated the 18th day of September, A.D. 1961 approving the intended route of a right-of-way;
- (c) has, pursuant to the provisions of The Expropriation Procedure Act, obtained from the Public Utilities Board its Order No. ----- dated the ---- day of ----- A.D. 1963 wherein the Applicant was granted the right, licence, privilege and easement of a right-of-way One Hundred and Fifty (150) feet in width, containing (as shown in acres more or less across the land described in each order) for an electrical transmission line of the company;
- (d) the said Order No. ----- provided that the Applicant shall have the immediate and continual right to enter upon the said right-of-way and to do thereon all things necessary for the construction, erection and maintenance thereon of:

(here follows a description of the facilities)

all forming a part of its said electrical transmission lines.

- (e) has caused a search to be made in the Office of the Registrar for the South Alberta Land Registration District of the certificate of title comprising the said lands and finds that (name of Respondent) is the registered owner of the said land;
- (f) is informed, and believes that the said (name of Respondent) is in possession of the said lands;
- (g) has ascertained from the records of the Land Titles Office for the South Alberta Land Registration District that those persons set forth and described in Schedule "A" annexed hereto have a

" right, title or interest in the said lands as therein indicated;

- (h) requires that the said Order No. ----- be amended to provide for the construction, erection and maintenance of (facilities shown in each application).

DOTH HEREBY make application to the Public Utilities Board (hereinafter referred to as 'the Board').

1. For an order amending the terms of the said Order No. ----- to provide for the construction, erection and maintenance of (shown in each application)" and declaring:

- (a) the names and addresses of the persons having an estate or interest in the said lands;
- (b) the amount of money payable by the Applicant to the persons for the estate or interest granted to the Applicant, and the manner in which such money is payable;
- (c) the amount of money payable by the Applicant to persons so entitled for incidental damages resulting from or likely to result from the construction of said transmission lines or any works or undertakings for which the said land is required; and
- (d) the costs of and incidental to the application and by whom payable;

- and -

PART II

II. For an order that upon the Applicant making a deposit with the Board of such amount as the Board estimates to be sufficient to secure the payment by the Applicant of such sums as may, by reason or on account of the exercise of all or any of the right of the Applicant granted by the Board, become payable ultimately to the person so entitled, the Applicant be at liberty to exercise forthwith, in such manner and subject to such conditions as the Board may deem fit and proper in the circumstances, such rights in or over the land as may be so specified."

The Board heard these applications at the Court House in the City of Calgary on March 25, 1971 and accepted from Calgary Power deposits aggregating \$750.00 as security for the orders applied for under Part II of the applications.

Questions have arisen as to the Board's jurisdiction to amend the terms of the orders previously granted and to issue interim orders of the nature petitioned for in Part II of the applications.

The circumstances are that The Expropriation Procedure Act, cap. 130, R.S.A. 1970, as it now is, (hereinafter referred to as "the Act") was amended by cap. 30, S.A. 1970, the effect of which was to transfer the jurisdiction formerly held by this Board to the Board of Arbitration appointed under The Right of Entry Arbitration Act. These amendments have reference to expropriations by companies under Part 3 of the Act. As amended the Act now provides:

" 32. (1) Except as provided in subsection (2), the Public Utilities Board has jurisdiction with respect to expropriations under this Part.

(2) The Board of Arbitration has jurisdiction with respect to expropriations under this Part authorized under or pursuant to

(a) The Pipe Line Act, or

(b) The Water, Gas, Electric and Telephone Companies Act, or

(c) section 86 of The Water Resources Act,

where such expropriation proceedings are commenced on or after July 1, 1970.

(3) Where an authorizing Act empowers a company to acquire land by expropriation, the land may be expropriated in the manner prescribed by this Part and not otherwise but subject to any provisions of the authorizing Act respecting the holding of a permit by the company."

The Act previously gave to this Board jurisdiction to deal with all applications under Part 3. The amendment has the effect of restricting such jurisdiction to:

(a) proceedings commenced prior to July 1, 1970,

(b) applications made by "authorized bodies" as defined in sections 40 and 41 of the Act.

Sections 40 and 41 relate to expropriations by school districts and other corporate bodies but do not include the companies referred to in Section 32 (2) of the Act. Calgary Power

derives its power to expropriate lands under the provisions of The Water Resources Act, cap. 388, R.S.A. 1970. Calgary Power argues that the applications which it has now made do not constitute applications to expropriate lands. All that is being sought, they say, is the right to construct additional transmission lines on a right-of-way previously acquired under Orders Nos. 26114, 26115 and 26116.

It is argued that all that is required now is an amendment to these orders to expand the use of such right-of-way and Calgary Power contends the Board has the jurisdiction to amend such orders under Section 56 of Part 1 of The Public Utilities Board Act, which part is applicable to proceedings under the Act as provided by Section 48 thereof, which reads:

" 48. (1) The provisions of Part 1 of The Public Utilities Board Act, relating to the powers of the Public Utilities Board, the procedure of that Board and the enforcement of orders of that Board, apply to proceedings and orders of that Board under this Act in so far as they do not conflict with the provisions of this Act.

(2) The provisions of The Right of Entry Arbitration Act relating to the powers of the Board of Arbitration, the procedure of that Board and the enforcement of orders of that Board apply mutatis mutandis to proceedings and orders of that Board under this Act in so far as they do not conflict with the provisions of this Act."

Section 56 of The Public Utilities Board Act on which reliance is placed reads:

" 56. The Board may rehear an application before deciding it, and may review, rescind or vary any order or decision made by it."

* * * * *

Before considering the question of whether or not the Board has power to vary or amend the orders previously issued the Board considers it is necessary to review what rights were obtained by Calgary Power under such orders.

There is no question that the approval which Calgary Power obtained from the Minister under the provisions of The Water Resources Act authorized the acquisition of a strip of

land 150 feet in width. This width was more than sufficient to construct one transmission line and it appears manifest that all parties at that time were aware that at some future time Calgary Power proposed to construct additional transmission facilities on the interest in the lands which it acquired in 1963 under the provisions of the orders issued by the Board at that time. The orders, however, provided only for the construction of the facilities constructed by Calgary Power at that time and the rights which Calgary Power had to the use of such lands were the rights set out in the orders. These rights are restricted to the construction, maintenance and replacement of certain specific transmission towers and the wires and fixtures associated therewith.

Upon the granting of such orders the Board considers that its jurisdiction with respect to the applications which gave it the right to issue the orders was at an end and it may not now vary or amend the orders previously made.

* * * * *

The Board is of the view that the applications which Calgary Power has now made to the Board are proceedings which commenced "on or after July 1, 1970". The question is whether the applications have reference to "expropriation proceedings" as contemplated in Section 32 of the Act. The Board considers that they do.

Specifically, Calgary Power in these applications is seeking,

- (a) interim orders permitting it to construct additional facilities on an existing right-of-way interest which it holds in the subject lands;
- (b) an order granting it the right to construct such facilities and the amount of money it will be required to pay for damages arising out of such construction.

The powers to grant such orders are contained in

Sections 35 and 36 of the Act, which powers, on July 1, 1970, were transferred from this Board to the Board of Arbitration.

Calgary Power says that no further interest in land is being asked for and, therefore, no expropriation is involved in these proceedings. The Board is of opinion that the words "where such expropriation proceedings are commenced on or after July 1, 1970" as used in Section 32 (2) of the Act, can only refer to applications made to the Board prior to that date on which the Board has not concluded its hearing of such applications and granted the orders applied for.

Section 35 (2) of the Act lists a number of matters on which the Board referred to in the section may deal, including:

- "(e) the amount of money payable by the company to the Crown or other persons for incidental damages resulting from or likely to result from the construction of the works for which the land is or was required, and"

The Board referred to in this section is this Board in applications made by authorized bodies, other than those companies to which Section 32 (2) applies. In applications by such companies it is the Board of Arbitration which has jurisdiction.

The Board is convinced that the intention of the Legislature is expressed in Section 32 of the Act wherein any company, subject to the provisions of the acts therein referred to, making an application which has reference to expropriation proceedings, and which applications are made on or after July 1, 1970, must apply not to this Board but to the Board of Arbitration.

The Board is satisfied that it lacks the jurisdiction to grant the orders applied for by Calgary Power which, as the Board has indicated earlier, have reference to expropriation proceedings commenced after July 1, 1970, and accordingly, therefore, are applications which should be made to the Board of Arbitration.

The Board must, therefore, dismiss the applications made to it by Calgary Power.

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Calgary Power may now apply to the Board for a refund of the deposits which it has lodged with the Board, which deposits aggregate \$750.00.

DATED AT EDMONTON, in the Province of Alberta, this Tenth day of May, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) K. J. LEATHEN

MEMBER

(SIGNED) H. A. WILLIAMS

ACTING MEMBER

Certified a true copy.

Secretary

A.C. 20228



File: P.U. 6614-D

IN THE MATTER OF "The Alberta Gas
Trunk Line Company Act":

AND IN THE MATTER OF "The Public
Utilities Board Act":

AND IN THE MATTER OF complaints made
to the Public Utilities Board by
Trans-Canada Pipe Lines Limited;
Westcoast Transmission Company (Alberta)
Ltd.; Alberta Southern Gas Co. Ltd. and
Westcoast Transmission Company Limited
concerning the rates, tolls or charges
fixed by The Alberta Gas Trunk Line
Company Limited:

BETWEEN:

TRANS-CANADA PIPE LINES LIMITED;

WESTCOAST TRANSMISSION COMPANY
(ALBERTA) LTD.;

ALBERTA SOUTHERN GAS CO. LTD. and
WESTCOAST TRANSMISSION COMPANY LIMITED

!!
Complainants

- and -

CONSUMERS' GAS COMPANY;

UNION GAS COMPANY OF CANADA, LIMITED;

NORTHERN AND CENTRAL GAS CORPORATION
LIMITED;

SASKATCHEWAN POWER CORPORATION;

EL PASO NATURAL GAS COMPANY;

GULF OIL CANADA LIMITED;

CONSOLIDATED NATURAL GAS LIMITED

Interveners

- and -

THE ALBERTA GAS TRUNK LINE COMPANY
LIMITED

Respondent

APPEARANCES:

B. V. Massie, Esq., Q.C.	:	for Trans-Canada Pipe Lines
	:	Limited
D. P. McDonald, Esq., Q.C.	:	for Westcoast Transmission
C. D. Williams, Esq.	:	Company (Alberta) Ltd.

R. A. MacKimmie, Esq., Q.C.	:	for Alberta Southern Gas Co.
J. R. Smith, Esq., Q.C.	:	Ltd. and Westcoast Transmission
R. J. Ludgate, Esq.	:	Company Limited
R. J. Gibbs, Esq.,	:	for Consumers' Gas Company;
J. W. S. McOuat, Esq.	:	Union Gas Company of Canada,
H. J. Knowles, Esq.	:	Limited; Northern and Central
	:	Gas Corporation Limited;
	:	Saskatchewan Power Corporation
J. W. Swackhamer, Esq., Q.C.	:	for El Paso Natural Gas Company
W. M. Winterton, Esq.	:	for Gulf Oil Canada Limited
J. H. Laycraft, Esq., Q.C.	:	for Consolidated Natural Gas
G. D. Nichols, Esq.	:	Limited
A. F. Moir, Esq., Q.C.	:	for The Alberta Gas Trunk
G. R. Forsyth, Esq.	:	Line Company Limited

D E C I S I O N

Applications have been made to the Public Utilities Board
by:

Trans-Canada Pipe Lines Limited
(hereinafter referred to as "Trans-Canada"),

Westcoast Transmission Company (Alberta)
Ltd. (hereinafter referred to as
"Westcoast Alberta"),

Alberta Southern Gas Co. Ltd. and
Westcoast Transmission Company Limited
(hereinafter referred to as "Southern
and Westcoast" or separately as "Southern"
and "Westcoast"),

- (a) for a determination of the justness and reasonableness of a proposed rate of 8 3/4% per annum on the net investment rate base of Trunk Line;
- (b) for an order fixing or varying the proposed rate of 8 3/4% to such lesser rate as the Board may determine as being just and reasonable.

The words "Trunk Line", which will be referred to throughout this decision, have reference to The Alberta Gas Trunk Line Company Limited incorporated under The Alberta Gas Trunk Line Company Act, being chapter 37, Statutes of Alberta 1954 (hereinafter referred to as "the Act").

The applications were spoken to at the Court House in the City of Calgary on September 10, 1970 and October 8, 1970, at

which there appeared, in addition to the complainants and the respondent:

Consumers' Gas Company (hereinafter referred to as "Consumers")

Union Gas Company of Canada, Limited (hereinafter referred to as "Union"),

Northern and Central Gas Corporation Limited (hereinafter referred to as "Northern"),

Saskatchewan Power Corporation (hereinafter referred to as "Saskatchewan"),

El Paso Natural Gas Company (hereinafter referred to as "El Paso"),

Gulf Oil Canada Limited (hereinafter referred to as "Gulf"),

Consolidated Natural Gas Limited (hereinafter referred to as "Consolidated").

The Board's jurisdiction to hear the complaints and to determine the justness and reasonableness of any rate, toll or charge fixed by Trunk Line is contained in section 30 of the Act as amended by chapter 5, Statutes of Alberta 1970 which also provides that Part I of The Public Utilities Board Act, chapter 85, Statutes of Alberta 1960, shall apply with respect to matters within the jurisdiction of the Board.

Section 30 of the Act, as amended, provides as follows:

" 30. (1) The company shall from time to time fix the rates, tolls and other charges for the gathering, treating, transporting, storing, distributing, handling and delivery of gas carried by its pipe lines and other facilities or any part or parts thereof, or for any service performed by the company in relation to the gathering, treating, transporting, storing, distributing, handling or delivery of any gas.

(2) Upon complaint in writing of an interested party the Public Utilities Board may, or upon the direction of the Lieutenant Governor in Council shall, after notice to and hearing of the parties interested, determine the justness and reasonableness of any rate, toll or charge fixed by the company and by order in writing may vary or confirm the rate, toll or charge.

(3) Where the Public Utilities Board varies a rate, toll or charge fixed by the company, its order shall specify that the variation shall remain in force and effect until a specified date or until the date of the happening of a specified event but in no case shall the period involved exceed 12 months.

" (4) The provisions of Part I of The Public Utilities Board Act apply with respect to matters within the jurisdiction of the Public Utilities Board under this section in so far as they do not conflict with the provisions of this section."

The effect of this section is that Trunk Line shall fix the rates, tolls and charges which it charges its customers for services which it performs and any "interested party" may complain to the Board with respect to such rates, tolls or charges and the Board, after notice to "parties interested", may hear the complaints.

The Board following receipt of the complaints caused to be published a notice in the following terms:

PUBLIC UTILITIES BOARD
PROVINCE OF ALBERTA

" NOTICE OF HEARING of complaints made pursuant to Section 30 of The Alberta Gas Trunk Line Company Act, Chap. 37, Statutes of Alberta, 1954, as amended.

WHEREAS certain interested parties have filed complaints in writing with the Public Utilities Board for variation in the rates, tolls and charges fixed by The Alberta Gas Trunk Line Company, particularly concerning an annual rate of 8 3/4% on the net investment rate base of the company as defined under certain transportation contracts.

TAKE NOTICE that the Public Utilities Board has set Thursday, October 8th, 1970, at the Court House, in the City of Calgary, at the hour of 9:30 o'clock in the forenoon, mountain-standard-time, as the time and place for determining the interested parties entitled to participate in the hearing of the complaints.

AND FURTHER TAKE NOTICE that any person claiming to be an interested party and intending to appear at the hearing shall, on or before October 2, 1970, file at the office of the Board, 900 Devonian Building, 11160 Jasper Avenue, Edmonton, three copies of any contract or other material upon which such person relies verified by affidavit and, at the direction of the Board, provide such additional copies as the Board may direct.

AND FURTHER TAKE NOTICE that the Public Utilities Board has set November 17th to the 20th inclusive and November 24th to the 27th inclusive at the Court House in the City of Calgary, each day sitting to commence at 9:30 o'clock in the forenoon, mountain-standard-time, as the time and place for hearing evidence relevant to the complaints which have been filed with the Board.

" DATED at the City of Edmonton, in the Province of Alberta, this 14th day of September, A.D. 1970.

PUBLIC UTILITIES BOARD

A. E. Fahlman

Secretary

"

This notice was published in the Edmonton Journal, the Calgary Herald, the Calgary Albertan and in the Financial Post. In addition, notice by prepaid mail was served upon those parties which had appeared before the Board on September 10, 1970.

The preliminary matters spoken to at the hearings held on September 10th and October 8th, 1970, had reference to the exchange of material between the parties which would be considered at the hearing of the complaints and to the status of those who had appeared who, in this decision, have been referred to as "Interveners".

The complaints made by Trans-Canada, Westcoast Alberta and Southern and Westcoast are for a determination by the Board of the justness and reasonableness of an 8 3/4% rate of return on the net investment rate base of Trunk Line.

The 8 3/4% rate of return, to which exception is taken, was established by resolutions of the board of directors of Trunk Line on June 27, 1970. Three resolutions are involved. They read as follows:

" IT WAS RESOLVED that a return at an annual rate of 8-3/4% on the net investment rate base as defined in the Gas Transportation Contract between Trans-Canada Pipe Lines Limited and The Alberta Gas Trunk Line Company Limited dated the 29th day of January, 1957 and amendments thereto be and it is hereby fixed, effective July 1, 1970."

" IT WAS RESOLVED that a return at an annual rate of 8-3/4% on the net investment rate base as defined in the Gas Transportation Contract between Westcoast Transmission Company (Alberta) Ltd. and The Alberta Gas Trunk Line Company Limited dated the 9th day of November, 1961 and amendments thereto be and it is hereby fixed, effective July 1, 1970."

" IT WAS RESOLVED that a return at an annual rate of 8-3/4% on the net investment rate base as defined in the Gas Transportation Contract between Alberta and Southern Gas Co. Ltd., Westcoast Transmission Company

"Limited and The Alberta Gas Trunk Line Company dated the 14th day of June 1960 and amendments thereto be and it is hereby fixed, effective July 1, 1970."

The statute incorporating Trunk Line was given Royal assent on April 5, 1954. Section 3 of the Act gave the Lieutenant Governor in Council power to designate a provisional board of directors. The section reads:

" 3. (1) The Lieutenant Governor in Council shall designate not more than seven persons who together with the persons who become shareholders in the company are hereby incorporated under the name of 'The Alberta Gas Trunk Line Company Limited'.

(2) The persons designated by the Lieutenant Governor in Council shall be the provisional Board of Directors of the company.

(3) If a provisional director resigns, dies or becomes incapable of fulfilling his duties, the Lieutenant Governor may designate a person to replace such director on the provisional Board of Directors.

(4) No member of the Government of Alberta and no member of the public service of Alberta shall be designated as a member of the provisional Board of Directors of the company. (1954, c.37,s.3)"

The provisional directors designated by Orders-in-Council 773/54 and 980/54 were:

R. Will	R. Martland, Q.C.
R. H. C. Harrison	G. Church
V. Taylor	R. J. Dinning
N. E. Tanner	

The authority for Trunk Line to issue and allot shares is contained in sections 5, 5a, 6 and 7 of the Act, which provide:

- " 5. The capital stock of the company shall consist of
- (a) eight million Class "A" common shares of the par value of five dollars with no voting rights attached to the shares, and
 - (b) two thousand and two Class "B" common shares of the par value of five dollars with voting rights attached to the shares, and
 - (c) two million preferred shares of the par value of one hundred dollars with no voting rights attached

" to the shares.
(1954, c. 37, s. 5; 1959, c. 25, s.2;
1964, c. 3, s. 2; 1970, c. 5, s.2)

5a. The liability of a shareholder in the company is limited to the amount, if any, unpaid on the shares respectively held by him. (1955, c. 38, s. 24. Effective April 8, 1954)

6. (1) The Class "B" common shares shall be divided into

- (a) two hundred Class "B" Common Group I,
- (b) fifty Class "B" Common Group II,
- (c) seventeen hundred and fifty Class "B" Common Group III, and
- (d) two only Class "B" Common Group IV.

(2) The Class "B" common shares shall be allotted only to the persons qualified under sections 7 to 11 to hold Class "B" common shares. (1954, c. 37, s. 6)

7. (1) Class "B" Common Group I shares shall be allotted only to utility companies.

(2) Class "B" Common Group II shares shall be allotted only to gas export companies.

(3) Class "B" Common Group III shares shall be allotted only to gas producers.

(4) The two Class "B" Common Group IV shares shall be allotted only to the directors appointed by the Lieutenant Governor in Council to the Board of Directors of the Company. (1954, c. 37, s. 7; 1966, c. 3, s. 3)"

Class "B" voting shares are to be allotted by the board of directors of Trunk Line having regard to Section 11 of the Act which reads:

" 11. (1) Applications for an allotment of Class "B" common shares shall be made to the Board.

(2) The Board shall determine whether an applicant for Class "B" common shares is qualified under the requirements of this Act to hold any shares of Groups I to III respectively and may approve an application for one or more shares in accordance with this section.

(3) In determining the number of Class "B" common shares of Groups I, II or III which may be allotted to an applicant, the Board shall have regard, inter alia, to the following considerations:

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" (a) if the applicant is a utility company the Board shall have regard to

- (i) the amount of capital invested in the utility company,
 - (ii) the extent of the gas pipe line system operated by the utility company in the Province,
 - (iii) the size and number of the communities in the Province served with gas by the utility company,
 - (iv) the quantity of gas annually sold in the Province by the utility company, and
 - (v) the extent of the use of the company's facilities then being made or contracted for by the utility company,
- (b) if the applicant is a gas export company, the Board shall have regard to
- (i) the quantity of gas then authorized to be taken from the Province by the gas export company, and
 - (ii) the extent of the use of the company's facilities then being made or contracted for by the gas export company,

and

- (c) if the applicant is a gas producer, the Board shall have regard to the annual volumes of gas (during the calendar year preceding the calendar year in which the allotment of shares is made to such applicant) produced in the Province and sold or delivered to the company or produced in the Province, sold to others and delivered to the company for transportation by the company, and for the purpose of this clause such volumes shall be computed on the basis of 14.4 pounds per square inch absolute at 60° Fahrenheit.

(4) As a condition of allotment of Class "B" common shares, the Board may require that the applicant purchase

- (a) such number of Class "A" common shares of the company, and
- (b) at such price not being more than the market value at the time of the subscription or less than the par value

as the Board may determine.

(1954, c. 27, s. 11; 1962, c. 27, s. 6;
1966, c. 3, s. 5)

" 11a. (1) The Board shall, in the year 1966 and in each fifth year thereafter, by resolution,

- (a) direct the repurchase by the company of Groups 1 to 111 of Class "B" common shares of the company then issued and outstanding, and
- (b) provide for written notice to be mailed by registered mail to the holders of Groups 1 to 111 of the Class "B" common shares of the company then issued and outstanding, which notice shall
 - (i) require the holders of Groups 1 to 111 of Class "B" common shares of the company to surrender to the company within a specified period (which shall be not less than thirty days nor more than sixty days after the mailing of the notice) the certificates for the respective Class "B" common shares held by the holder,
 - (ii) advise the holders that applicants for purchase of Class "B" common shares of the company may within the period specified in the notice apply for the purchase of such Class "B" common shares to which they may be entitled, and
 - (iii) be deemed to have been received on the third day following the mailing of the notice by registered mail at the city of Calgary.

(2) Holders of Class "B" Groups 1, 11 and 111 common shares shall, upon the company having mailed the notice referred to in subsection (1), surrender the certificates of the Class "B" shares to the company within the period specified in the notice.

(3) Applicants for the purchase of Group 1, 11 or 111 Class "B" common shares of the company (including any then holders or former holders of Group 1, 11 or 111 Class "B" common shares of the company and including persons not then or former holders) may within the same period as was specified in the notice apply for the purchase of such Group 1, 11 or 111 Class "B" common shares as may be allotted to such applicants in accordance with the provisions of this Act.

(4) The Board shall determine whether an applicant for Group 1, 11 or 111 Class "B" common shares is at the time qualified under the requirements of this Act to hold any shares of Group 1, 11 or 111 respectively and may approve any application for such shares in accordance with the provisions of this Act.

(5) The Board may, by resolution, allot Group 1, 11 or 111 Class "B" common shares to those applicants therefor

"in accordance with the provisions of this Act and upon such resolution being passed by the Board

- (a) the Group I, II and III Class "B" common shares of the company at the time of such passing outstanding shall be deemed to have been re-purchased by the company,
- (b) the ownership of all such shares and all rights thereunder shall as of the time of such passing revert to the company, and
- (c) the company shall pay the par value of such shares to the person entitled to the same,

but until the Board has passed the resolution effecting the re-allotment of shares as herein provided, and notwithstanding that the certificates for the shares have been theretofore surrendered to the company pursuant to this section, the shareholders of the company at the time the outstanding and all rights in connection therewith shall continue in full force and effect.

(6) Notwithstanding the change in shareholders or shareholdings effected pursuant to this section, such change, by reason only of such change, in no way disqualifies, removes or otherwise affects the status of any director as such and any such director shall continue to hold office subject, however, to the other provisions of this Act.

(7) Nothing in this section in any way affects the right of the Board to, at any time and from time to time, allot Class "B" common shares of the company.

(1966, c. 3, s. 6)

12. (1) A person appointed to the Board by the Lieutenant Governor in Council under section 19 may acquire one Class "B" Common Group IV share of the company.

(2) The Lieutenant Governor in Council may authorize the Provincial Treasurer to pay for the acquisition by the appointed directors of two Class "B" Common Group IV shares of the company.

(3) The two Class "B" Common Group IV shares shall be purchased in the names of the two directors first appointed to the Board by the Lieutenant Governor in Council.

(4) Her Majesty acquires no beneficial or other interest to the Class "B" Common Group IV shares acquired by the appointed directors and paid for under this section.

(5) The two shares so acquired shall only be transferred in the manner and for the purpose set out in section 9.

" (6) The shareholders holding Class "B" Common Group IV shares have full voting rights under all circumstances which without restricting the generality of this subsection includes the right to vote such shares

(a) in any election of any of the directors referred to in section 20,

(b) in any re-election of any such director held pursuant to subsection (2) of section 22, and

(c) in any special election held pursuant to section 25.

(1954, c. 37, s. 12; 1964, c. 3, s. 3) "

The Board of Directors of Trunk Line consists of five elected directors and two appointed directors, the latter being appointed by the Lieutenant Governor in Council.

Sections 18, 19 and 20 of the Act provide:

" 18. (1) The Board shall consist of five elected directors and two appointed directors.

(2) No person shall be elected or appointed to the Board unless

(a) he is a Canadian citizen domiciled in Alberta, and

(b) he has been a resident of the Province for at least one year.

(3) No member of the Government of Alberta and no member of the public service of Alberta shall be appointed to the Board. (1954, c. 37, s. 18)

19. (1) Subject to section 20, the shareholders who hold Class "B" common shares in the company and who are otherwise qualified to vote shall elect five directors to the Board.

(2) The Lieutenant Governor in Council shall appoint two directors to the Board. (1954, c. 37, s. 19)

20. In electing the directors of the company

(a) shareholders holding Class "B" Common Group I shares may elect one director to the Board,

(b) shareholders holding Class "B" Common Group II shares may elect one director to the Board,

(c) shareholders holding Class "B" Common Group III shares may elect three directors to the Board.

(1954, c. 37, s. 20)

The general powers of Trunk Line are contained in Sections 13 and 14 of the Act which confines Trunk Line's activities within the Province of Alberta. The section provides:

" 13. (1) Subject to the provisions of any general legislation enacted by the Legislative Assembly, the company within the Province only may

- (a) act as a common carrier of gas,
- (b) act as a common purchaser of gas from any pool in the Province,
- (c) construct gas pipe lines for the transmission of gas, re-arrange gas pipe lines, install compressor and all other equipment required for, and perform all further acts and things for the purpose of conserving, gathering and transporting gas,
- (d) develop, purchase, lease or otherwise acquire, hold, operate or maintain and control gas storage fields and the necessary facilities for their operation,
- (e) construct, purchase, lease or otherwise acquire and hold, develop, operate, maintain, control, mortgage, create liens upon, sell, convey or otherwise dispose of and turn to account any and all pipe lines, gas storage fields and appurtenances relative thereto for gathering, processing, transmitting, transporting, storing and delivering gas and other gaseous hydrocarbons,
- (f) purchase, acquire, process, transmit, transport, distribute and sell or otherwise acquire and dispose of gas,
- (g) own, lease, operate and maintain inter-station telephone, radio, teletype and telegraph communication systems and to operate and maintain interstation communication facilities,
- (h) purify, scrub or otherwise treat for the removal therefrom of hydrogen sulphide or other substances from that portion of the gas required for the market,
- (i) exercise all or any of the powers defined in subsection (1) of section 19 of The Companies Act.

(2) In the exercise of its powers the company has the right to commingle gas in its pipe lines or other facilities or any part or parts thereof irrespective of the ownership of the gases commingled.

(1954, c. 37, s. 13; 1970, c. 5, s. 4)



" 14. The objects and powers of the company do not authorize and shall not be interpreted to authorize the purchase, acquisition, construction, operation or control by the company of any works or undertakings situate outside the Province of Alberta.

(1954, c. 37, s. 14) "

The first balance sheet issued by Trunk Line is dated December 31, 1954, at which time its capitalization consisted of:

150,560 Class "A" common shares
941 Class "B" common shares

In the directors first published report to the shareholders dated April 13, 1959 covering the year ended December 31, 1958 the shareholders were informed that Trunk Line had issued 30 million dollars 5½% first mortgage bonds maturing May 1, 1981 at a unit price of \$99.00 and that its capitalization at that time consisted of:

2,700,000 Class "A" common shares
922 Class "B" common shares

Its statement of earned surplus for the year ended December 31, 1958 was given as follows:

Balance at debit, 1st January, 1958	\$ (33,979)
Write-off of incorporation expenses	(138)
Adjustments re 1957--Note 1	
Accumulated depreciation reversed	35,067
Non-construction expenses capitalized	230,125
Net income for the year	<u>236,679</u>
Balance at credit, 31st December, 1958	<u>\$ 467,754</u>

At that time Trunk Line's revenue was derived chiefly from a contract which it had to transport gas for Trans-Canada to which the following reference is made in the report:

" The present transportation contract between your Company and Trans-Canada Pipe Lines Limited provides for a development period of 4 years ending October 1, 1961, during which period Trunk Line has agreed to transport gas through its system for 4¢ per Mcf. The agreement provides that, following this 4-year development period Trans-Canada will pay Trunk Line's operating costs, including depreciation and taxes, both income and



Bother, together with a rate of return of 7½% on Trunk Line's net investment. Out of the 7½% return on investment, Trunk Line must pay cost of borrowed money. The agreement also provides that depreciation will be deferred until the end of the development period, October 1, 1961, and, therefore, no provision has been made for a depreciation reserve in the financial statements herein.

The Company was requested by Trans-Canada Pipe Lines Limited to alter its 1959 construction plans which of course changed your company's capital requirements. Original plans called for the construction of a 24" line on the east side of the Red Deer River from Cessford to the Nevis area, at an estimated cost of \$11,500,000. Trunk Line decided to construct a 30" line on the west side of the Red Deer River to a point near Torrington with lateral lines to the Nevis and Carstairs fields. Other field laterals will also be constructed enabling Trans-Canada to obtain gas from several additional fields. It is estimated that the 1959 program will cost \$23,000,000 which is \$11,500,000 more than originally planned. Negotiations are presently underway with Trans-Canada Pipe Lines Limited to determine the additional compensation to be paid to Trunk Line for these added services."

At that time Trunk Line's investment in plant in service is stated in the balance sheet at \$34,891,327.

In the intervening years Trunk Line entered into contracts with other companies exporting natural gas from Alberta, notably the complainants in these proceedings, and at December 31, 1969 in its annual report to its shareholders its investment in plant in service had expanded to:

Plant	\$315,099,000
Less accumulated depreciation	<u>46,996,000</u>
	<u>\$268,103,000</u>

Its retained earnings for the year 1969 were stated to be:

	<u>1969</u>
Balance at beginning of year	\$15,548,000
Add net income for the year	<u>9,820,000</u>
	<u>25,368,000</u>
Less dividends paid or payable	
Preferred shares	2,280,000
Common shares	<u>4,901,000</u>
	<u>7,181,000</u>
Balance at end of year	<u>\$18,187,000</u>

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Its funded debt had increased from \$20 million in 1958 to \$142 million in 1969 made up as follows:

	<u>Million Dollars</u>
<u>First Mortgage Bonds</u>	
5 1/4% Series "A" issued in 1958 due in 1981	\$ 21.487
5 3/4% Series "B" issued in 1961 due in 1981	49.979
5 1/2% Series "C" issued in 1965 due in 1985	16.711
8 3/4% Series "D" issued in 1969 due in 1989	16.158

Secured Debentures

6 1/2% Series "A" issued in 1960 with warrants due in 1981	13.422
5 3/4% Series "B" issued in 1965 due in 1985	<u>23.925</u>
	<u>\$141.682 *</u>

* Includes sinking fund instalments of \$5.6 million due within one year.

It had also issued and outstanding:

Preferred Shares

254,195 4 3/4% cumulative redeemable preferred shares Series "C" issued in 1965	\$ 25.420
191,283 5 3/8% cumulative redeemable convertible preferred shares Series "D" issued in 1968	<u>19.128</u>
	<u>\$ 44.548</u>

Common Shares

3,322,350 Class "A"	\$ 16.612
1,771 Class "B"	<u>9</u>
	16.621
Contributed surplus	14.620
Retained earnings	<u>18.187</u>
	<u>\$ 49.428</u>

The relationship of long-term debt to the preferred and common shares issued and outstanding at December 31, 1969 may be summarized as follows:

	<u>Million Dollars</u>	<u>Percentage</u>
Long-term debt	\$136.035	59.14
Preferred shares	44.548	19.37
Common share equity	<u>40.428</u>	<u>21.49</u>
	<u>\$230.011</u>	<u>100.00</u>

The growth in plant experienced by Trunk Line with its corresponding capitalization expansion is indicative of the growth in the expanding areas in Alberta from which natural gas is being obtained and upon which Trunk Line depends for its revenue under the service contracts which it has with the complainants, Trans-Canada, Westcoast Alberta and Southern and Westcoast.

The major part of Trunk Line's revenue is obtained from arrangements which it has with the complainants under contracts which provide for the transportation of gas owned by the complainants through facilities which are owned by Trunk Line. The contracts provide, with the exception of the Trans-Canada contract, that the transportation services provided by Trunk Line are to be paid for by the complainants on a "cost of service" basis.

The exception of the Trans-Canada contract referred to above, is a provision in the contract that for a period of four years after gas is transported for it by Trunk Line, Trans-Canada will pay a tariff of 4¢ per Mcf. conditional upon a minimum annual charge in the first year amounting to \$210,480 and in the fourth year \$3,621,760.

The contracts referred to have, since their original execution, been amended from time to time but basically "cost of service" is defined in each contract to include:

- (a) Operating expenses
- (b) Depreciation
- (c) Amortization of certain costs
- (d) Taxes - income and other

- (c) Return of 7½% on a net investment rate base in which is included an allowance for working capital.

The original contracts were entered into by the parties on the following dates:

Trans-Canada	January 29, 1957
Southern and Westcoast	June 14, 1960
Westcoast Alberta	November 9, 1961

Up to and including June 30, 1970 the parties, by agreement, and from time to time varied the terms of the contracts as circumstances warranted and had agreed to an increase in the rate of return on the net investment rate base from the original contractual rate of 7½% to a rate of 8% effective January 1, 1969.

As has been indicated earlier the directors of Trunk Line instituted an increase in the rate of return effective July 1, 1970 to 8 3/4% and it is on this rate increase that complaints have been made.

The Board was informed that the complainants by agreement with Trunk Line were paying the cost of service charges which included the 8 3/4% rate of return fixed by the directors of Trunk Line commencing July 1, 1970 and that payments were being made subject to any adjustment that may result if the Board varied the rate of return complained of. The Board understands this to mean that if it varies the rate the parties have agreed to make such variation applicable from July 1, 1970 with the necessary adjustments to be made in the cost of service billings arising from such adjustment, it being understood that any variation in the 8 3/4% rate which the Board may determine being applicable from July 1, 1970 to June 30, 1971.

Trunk Line's financing with respect to its funded debt is subject to three trust indentures as follows:

- (a) Deed of Trust and Mortgage dated May 1, 1958 with Montreal Trust Company securing first mortgage bonds to which twenty-one Supplementary Indentures have been entered into, the last being dated March 1, 1970.
- (b) Deed of Trust and Mortgage dated May 1, 1960 with The Royal Trust Company securing secured

debentures to which six Supplementary Indentures have been entered into, the last being dated March 1, 1967.

- (c) Trust Indenture dated February 3, 1970 with The Royal Trust Company with respect to unsecured debentures and to which two Supplementary Indentures have been entered into, the last being dated December 15, 1970.

These indentures, as is usual in this type of instrument, place certain restrictions upon Trunk Line in the financing arrangements which it may enter into. Among other things, Trunk Line may not:

- (a) issue any funded obligations unless its total capitalization is in excess of $1 \frac{1}{3}$ times its funded obligations.
- (b) pay dividends on its common stock if such payment has the effect of reducing its total capitalization below an amount in excess of $1 \frac{1}{3}$ times its funded obligations.
- (c) issue any additional bonds unless the net earnings in any actual or estimated 12 consecutive month period out of the 18 months next preceding, in the case of actual, or 18 months following in the case of an estimate, shall have been at least $2 \frac{1}{4}$ times the annual interest requirements of all bonds issued or proposed to be issued.
- (d) issue any secured debentures unless the net earnings of any actual or estimated 12 consecutive months period out of 23 months preceding, or 36 months following, shall have been $1 \frac{1}{2}$ times the annual interest requirements of all funded obligations issued or proposed to be issued.

The supplementary indentures which have been entered into by Trunk Line and Montreal Trust Company, the Trustee under the Deed of Trust and Mortgage entered into initially in 1950, provide for changes of a significant nature relating to the

determination of "consolidated earned surplus" to be used in calculating the capitalization of Trunk Line for the purpose of issuing additional bonds or paying dividends on common stock.

Under the Trust Deed, dated May 1, 1958, consolidated earned surplus is defined as:

"'consolidated earned surplus' means the aggregate amount of undistributed net earnings of the Company and its wholly-owned subsidiaries, determined as provided in clause 1.02 in accordance with sound accounting practice and after charging or making provision for all administration, selling and other operating expenses of every character (including, without limitation, provision for depreciation calculated at maximum rates as permitted for income tax purposes or at the rate of 4% per annum on gross depreciable property (computed on a straight line basis) whichever is greater, depletion, if any, and all interest and all taxes, including income and profit taxes) and exclusive of non-recurring and capital profits;"

The requirement that depreciation be calculated at maximum rates for income tax purposes (capital cost allowances) had the cumulative effect of decreasing earned surplus of Trunk Line at December 31, 1961 by \$17.830 million and at December 31, 1963 by \$23.775 million. These requirements were of an amount sufficient to render Trunk Line incapable of meeting a capitalization ratio wherein its total capitalization had to exceed 1 1/3 times the amount of its funded obligations.

To remedy this situation a revised definition was given to "consolidated earned surplus" under the 14th Supplemental Trust Deed, dated February 21, 1964, with retroactive effect to May 1, 1958. The revised definition reads:

"2.01 Effective May 1, 1958 subclause (k) of clause 1.01 of the principal deed is hereby changed to read as follows:

(k) 'consolidated earned surplus' means the aggregate amount of undistributed net earnings of the Company and its wholly-owned subsidiaries, determined as provided in clause 1.02 in accordance with sound accounting practice and after charging or making provision for all administrative, selling and other operating expenses of every character (including, without limitation, provision for depreciation on gross depreciable property computed on a straight

"line basis (at the greatest of (i) the amount required by sound accounting practice, (ii) the amount included in the rates charged to the customers of the Company and its wholly-owned subsidiaries, (iii) the amount required to be set aside by any rate-fixing regulatory authority having jurisdiction in that regard, and (iv) 3-1/2% per annum), depletion, if any, and all interest and all taxes including income and profits taxes plus or minus charges or credits to a reserve for deferred income taxes to the extent that such deferred taxes are or have been included in the rates charged to the customers of the Company and its wholly-owned subsidiaries) and exclusive of non-recurring and capital profits;"

The elimination of the "capital cost allowance" requirement increased the level of earned surplus to that sufficient to meet the 1 1/3 times funded obligation requirement.

A further revision was made to the definition of consolidated earned surplus in the 17th Supplemental Trust Deed dated February 3, 1966, being:

"3.01 Effective January 1, 1966 the definition of 'consolidated earned surplus' as contained in subclause (k) of clause 1.01 of the principal deed is hereby changed to read as follows:

(k) 'consolidated earned surplus' means the aggregate amount of undistributed net earnings of the Company and its wholly-owned subsidiaries, determined as provided in clause 1.02 in accordance with sound accounting practice and after charging or making provision for all administrative, selling and other operating expenses of every character (including, without limitation, provision for depreciation on gross depreciable property computed on a straight line basis (at the greatest of (i) the amount required by sound accounting practice, (ii) the amount included in the rates charged to the customers of the Company and its wholly-owned subsidiaries, (iii) the amount required to be set aside by any rate-fixing regulatory authority having jurisdiction in that regard, and (iv) the per annum average requirement for retirement of bonds under the trust deed), depletion, if any, and all interest and all taxes including income and profits taxes plus or minus charges or credits to a reserve for deferred income taxes to the extent that such deferred taxes are or have been included in the rates charged to the customers of the Company and its wholly-owned subsidiaries) and exclusive of non-recurring and capital profits; for the purpose of this subclause (k) the per annum average requirement for retirement of bonds under the trust deed shall be computed as of the date of the action referred to in clause 1.02 (herein in this subclause (k) referred to as the 'effective date') and

"shall be the aggregate of the principal amount of bonds, computed as of the effective date, required to be retired under the trust deed divided by the number of calendar years (as hereinafter in this subclause (k) defined) from the calendar year in which the effective date falls, to and including the calendar year in which falls the latest maturity date of any bonds then outstanding under the trust deed; for the purpose of this subclause (k) the number of calendar years shall be the number of calendar years computed from January 1 of the calendar year in which falls the effective date to and including December 31 of the calendar year in which the said latest maturity date falls, provided that, if in the calendar year in which the effective date falls there are no further retirements required to be made under the trust deed between such effective date and December 31 of such calendar year then the number of calendar years shall be computed from January 1 in the calendar year next following the calendar year in which the effective date falls;"

* * * * *

The major part of Trunk Line's revenue is derived from funds which it receives under contracts which it has with the complainants which have generally been referred to as cost of service contracts. That part of the funds which Trunk Line receives under these contracts which bear the closest relationship to net revenue for Trunk Line is the rate of return on the net investment rate base which Trunk Line has in facilities which it has constructed for the purpose of gathering and transporting gas produced in the Province acquired and owned by the complainants from points of such production to points on the Provincial boundaries where such gas is then transferred to facilities owned and operated by the complainants.

* * * * *

COST OF SERVICE CONTRACTS

The Trans-Canada contract, entered into on January 29, 1957, continues in force until May 14, 1981, a period of 24 years.

The Southern and westcoast contract, entered into on June 14, 1960, continues in force until October 31, 1986, a

period of 20 years.

The Westcoast Alberta contract, entered into on November 9, 1961 continues in force until December 31, 1981, a period of 20 years.

In order to provide for the depreciation of the facilities employed by Trunk Line in providing services to the complainants the depreciation rates under the provisions of the contract are related to the terms of the contracts.

* * * * *

THE TRANS-CANADA CONTRACT

In the case of Trans-Canada the initial arrangement provided for depreciation, charged on a monthly basis, commencing four years after Trunk Line commenced to transport gas for Trans-Canada. The annual depreciation rates which were established at that time were:

- | | |
|---|---------|
| (a) Office furniture and equipment, tools and work equipment. | 10% |
| (b) Transportation equipment | 33 1/3% |
| (c) Trunk Line's remaining legitimate investment | 4% |

Effective January 1, 1962 this basis was changed by the introduction of a formula applied to the net remaining undepreciated balance in plant investment to provide for the depreciation thereof over the duration of permits issued to Trans-Canada by the Oil and Gas Conservation Board. The method is described in the January 1, 1962 agreement as follows:

" (B) Depreciation

One-twelfthth ($1/12$) of the annual depreciation expense, computed in accordance with the following, and applicable to the actual legitimate investment in depreciable gas plant. For the purposes of this Agreement no depreciation has been or will be provided with respect to any part of the 'facilities' for the period to October 1, 1961. In order to distribute equitably the said investment over the lifetime of the 'facilities', the applicable annual depreciation expense shall be $\frac{1}{n - (n-1)}$ times the difference

between the total said investment in the 'facilities' and

"the balance in the depreciation reserve both taken at the beginning of the nth year (the symbol P represents a number equal to the number of years calculated from January 1, 1962, in (a) the authorized removal period under the permits granted to Trans-Canada by the Oil & Gas Conservation Board of Alberta, or (b) the dollar weighted average of the estimated physical life of the components of that portion of the 'facilities' consisting of depreciable gas plant, whichever is shorter. The symbol n is the number of the particular year for which the annual depreciation expense is being calculated, the first of which commences simultaneously with the period represented by the symbol P). For example:

First year depreciation: $\frac{1}{P}$ of the total investment in the facilities;

Second year depreciation: $\frac{1}{P-1}$ of the difference between the total investment in the 'facilities' and the balance in the depreciation reserve, both taken at the beginning of the second year.

At such time as the aforesaid permits for the removal of gas are renewed, extended, supplemented or modified or new permits are issued so as to prolong the authorized removal period, the unrecovered costs of the plant shall be determined and depreciation rates thereafter redetermined by the same method. Depreciation reserve accounts shall be set up and maintained in conventional accounting practice in accordance with the foregoing.

PROVIDED THAT:

(i) with respect to the 'original facilities', the 'additional stage 3 facilities and additional stage 4 facilities' and the '1961 facilities' the annual depreciation shall not exceed that amount which is equal to Four percent (4%) of Trunk Line's actual legitimate investment in depreciable gas plant computed on a straight line basis, and (ii) with respect to the '1962 compression facilities' and the 'further facilities' the annual depreciation shall not exceed that amount which is equal to Four percent (4%) of Trunk Line's actual legitimate investment in depreciable gas plant computed on a straight line basis, until either

(a) the remaining authorized removal period under the permits granted to Trans-Canada by the Oil & Gas Conservation Board of Alberta, or

(b) the dollar weighted average of the estimated physical life of the components of that portion consisting of depreciable gas plant,

is reduced to ten (10) years, in either of which events

"the foregoing formula shall apply unless and until new permits or amendments thereto shall again extend the permits and so on from time to time."

This arrangement was further amended in 1966, effective January 1st of that year, as follows:

"(3) Depreciation

One-twelfth (1/12) of the annual depreciation expense being the lesser of:

- I such expense computed on a straight line basis at a rate of two and one-half per cent (2½%) of Trunk Line's total actual legitimate investment in depreciable gas plant as at the 1st day of January of the then current year, or
- II such expense computed in accordance with the following formulae:

$$D = \frac{1}{P - (n-1)} \times R$$

Where D - is the annual depreciation expense

P - is the lesser of

- (a) the number of years calculated as of the 1st day of January of the then current year, determined by dividing by twelve (12) the number of months in the period commencing January 1, 1962 and terminating on the date on which Trans-Canada's right to remove gas from the Province of Alberta terminates under permits granted from time to time by the Oil & Gas Conservation Board (hereinafter called 'Trans-Canada's Permits'), or
- (b) the sum of
 - (i) the number of complete years in the period from January 1, 1962 to the 1st day of January of the then current year, and
 - (ii) the number of years determined by dividing by twelve (12) the number of months remaining in the estimated average physical life of depreciable gas plant determined by weighting, by dollar value, the components of the depreciable gas plant calculated as of the 1st day of January of the then current year.

n - is one (1) on January 1, 1962 and is increased by one (1) on each succeeding January 1 date.

R - represents the amount by which the total actual legitimate investment in depreciable gas plant as at the 1st day of January of the then current year exceeds the balance in the depreciation reserve as at the 1st day of January of the then current year.

Provided that

(a) if at the commencement of any calendar year the lesser of

- (i) the number of years determined by dividing by twelve (12) the number of months then remaining in the term of Trans-Canada's Permits, or
- (ii) the number of years determined by dividing by twelve (12) the number of months then remaining in the estimated average physical life of depreciable gas plant determined by weighting, by dollar value, the components of the depreciable gas plant

(hereinafter called 'the remaining term') is less than ten (10) years then the annual depreciation expense shall be calculated under II above, and

- (b) if at the commencement of any calendar year the remaining term is less than ten (10) years and during such calendar year the termination date of Trans-Canada's Permits is changed or additions are made to the depreciable gas plant so that the remaining term would have been greater than ten (10) years if such addition to depreciable gas plant or changed termination date had been in effect on the 1st day of January of such year, then commencing on the month next following the month in which such addition shall have been made or the termination date shall have been altered, the annual depreciation expense shall be computed as though such additions or changes had been in effect on such 1st day of January.

Depreciation reserve accounts shall be set up and maintained in accordance with conventional accounting practice and in accordance with the foregoing.

It is understood that for the purpose of this Transportation Contract no depreciation has been or will be provided with respect to any part of the Facilities for the period prior to October 1, 1961."

THE SOUTHWEST AND WESTCOAST CONTRACT

In the case of South and Westcoast, the June 14, 1966 contract provides for depreciation calculated on a formula basis as follows:

- " (b) Depreciation: One-twelfth ($1/12$) of the annual depreciation expense computed by the application of annual straight line depreciation rates to the actual legitimate investment in depreciable gas plant. In order to distribute equitably the said investment over the lifetime of the Projects, the applicable annual depreciation expense shall be $\frac{1}{P-(n-1)}$ times the difference between the total said investment and the balance in the depreciation reserve, both taken at the beginning of the nth year. (The symbol P represents a number equal to the number of years, calculated from the beginning of the first billing month hereunder, in (a) the authorized export period under the export permits granted to the shippers by the Oil and Gas Conservation Board of Alberta, or (b) the authorized export period under the export licences granted to the shippers by the National Energy Board of Canada, or (c) the dollar weighted average of the estimated physical life of the components of the depreciable gas plant, whichever is shortest. In the event that the respective authorized export periods, calculated as above provided, of one shipper are longer than those of the other shipper, then the value of P shall be determined as aforesaid by selecting the respective periods of each shipper, respectively, for the sections not used by or constructed for the use of the other shipper and by selecting the longer of said respective authorized export periods for the sections which are used jointly by shippers. The symbol n is the number of the particular year for which the annual depreciation expense is being calculated, the first of which commences simultaneously with the period represented by the symbol P.) For example:

First year depreciation: $\frac{1}{P}$ of the total investment.

Second year depreciation: $\frac{1}{P-1}$ of the difference between

the total investment and the balance in the depreciation reserve, both taken at the beginning of the second year.

At such time as the aforesaid export permits or licences are renewed, extended or supplemented or modified so as to prolong the authorized export period, the unrecovered cost of the plant shall be determined and depreciation rates thereafter redetermined by the same method.

" A depreciation reserve account shall be set up and maintained under conventional accounting practice in accordance with the foregoing. "

On January 1, 1960 this arrangement was amended and the following substituted:

"1. Effective the 1st day of January, 1966 paragraph 13.1(b) of the Contract dated as of the 14th day of June, 1960 is hereby amended to read as follows:

"(b) Depreciation:

(1) as to Alberta and Southern - one-twelfth (1/12) of the annual depreciation expense being the lesser of

(A) such expense computed on a straight line basis at the rate of two and one-half percent (2½%) of that portion of Trunk Line's total actual legitimate investment in depreciable gas plant used for the transportation of gas for Alberta and Southern as at the 1st day of January in the then current year (hereinafter referred to as 'the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant'), or

(B) such expense computed by the application of annual straight line depreciation rates to the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant; in order to distribute equitably the said investment over the lifetime of the Projects, the applicable annual depreciation expense shall be $\frac{1}{P-(n-1)}$ times the difference between the total of the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant and the balance in the depreciation reserve with respect thereto, both taken at the beginning of the nth year. (The symbol P represents a number equal to the number of years, calculated from the beginning of the first billing month hereunder, in

(i) the authorized export periods under the export permits granted to the shippers by the Oil & Gas Conservation Board of Alberta, or

(ii) the authorized export periods under the export licenses granted to the shippers by the National Energy Board of Canada, or

(iii) the geometric weighted average of the estimated physical life of the components of the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant,

whichever is shortest.

In the event that the respective authorized export period or periods, calculated as above provided, of one shipper are longer than those of the other shipper, then the value of P shall be determined as aforesaid by selecting the respective periods of each shipper respectively, for the sections not used by or constructed for the use of the other shipper and by selecting the longer of said respective authorized export periods for the sections which are used jointly by the shippers. The symbol n is the number of the particular year for which the annual depreciation expense is being calculated, the first of which commences simultaneously with the period represented by the symbol P .)

For example:

First Year Depreciation: $\frac{1}{P}$ of the total of the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant.

Second Year Depreciation: $\frac{1}{P-1}$ of the difference between the total of the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant and the balance in the depreciation reserves with respect thereto, both taken at the beginning of the second year.

At such time as the aforesaid export permits or licenses are renewed, extended or supplemented or modified so as to prolong the authorized export period or periods the unrecovered cost of the plant shall be determined and depreciation rates thereafter redetermined by the same method;

Provided That when

(X) the remaining authorized export period under the export permits granted to Alberta and Southern by the Oil & Gas Conservation Board

of Alberta, or

- (Y) the remaining authorized export period under the export licenses granted to Alberta and Southern by the National Energy Board of Canada; or
- (Z) the dollar weighted average of the estimated physical life of the components of the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant

is reduced to ten (10) years then the annual depreciation expense shall be computed in accordance with subsection (B) of this subclause (b)(1);

Provided Further That, if, during such ten (10) year period, the authorized export period under the export permits granted to Alberta and Southern by the Oil & Gas Conservation Board of Alberta or the authorized export period under the export licenses granted to Alberta and Southern by the National Energy Board of Canada are renewed, extended, supplemented or modified, or new permits or licenses are issued so as to prolong the authorized export period longer than ten (10) years from the beginning of the month next following the month in which such permits or licenses are renewed, extended, supplemented or modified or new permits or licenses are issued, or if the dollar weighted average of the estimated physical life of the components of the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant is extended so as to prolong the said estimated physical life longer than ten (10) years from the beginning of the month next following the month in which life is extended, the annual depreciation expense shall be again computed on the basis of the lesser of (A) or (Z) in this subclause (b)(1) from the beginning of the month next following the month in which such permits or licenses are renewed, extended, supplemented or modified or new permits are issued so as to prolong the authorized export period or the said estimated physical life is so extended and shall continue on that basis until the commencement of the new ten (10) year period as aforesaid, and so on from time to time;

(2) as to Westcoast: one-twelfth (1/12) of the annual depreciation expense computed by the application of annual straight line depreciation rates to that portion of Trunk Line's total actual legitimate investment in depreciable gas plant used for the transportation of gas for Westcoast as at the 1st day of January in the then current year (hereinafter referred to as 'the Westcoast portion of Trunk Line's actual legitimate investment in depreciable gas plant'); in order to distribute equitably the said investment over the lifetime of the Projects,

"the applicable annual depreciation expense shall be $\frac{1}{P-(n-1)}$

times the difference between the total of the Westcoast portion of Trunk Line's actual legitimate investment in depreciable gas plant and the balance in the depreciation reserve with respect thereto both taken at the beginning of the n th year. (The symbol P represents a number equal to the number of years, calculated from the beginning of the first billing month hereunder, in

- (i) the authorized export periods under the export permits granted to the shippers by the Oil & Gas Conservation Board of Alberta, or,
- (ii) the authorized export periods under the export licenses granted to the shippers by the National Energy Board of Canada, or
- (iii) the dollar weighted average of the estimated physical life of the components of the Westcoast portion of Trunk Line's actual legitimate investment in depreciable gas plant,

whichever is shortest.

In the event that the respective authorized export period or periods, calculated as above provided, of one shipper are longer than those of the other shipper, then the value of P shall be determined as aforesaid by selecting the respective periods of each shipper respectively, for the sections not used by or constructed for the use of the other shipper and by selecting the longer of said respective authorized export periods for the sections which are used jointly by shippers. The symbol n is the number of the particular year for which the annual depreciation expense is being calculated, the first of which commenced simultaneously with the period represented by the symbol P).

for example:

First Year Depreciation: $\frac{1}{P}$ of the total of the Westcoast portion of Trunk Line's actual legitimate investment in depreciable gas plant;

Second Year Depreciation: $\frac{1}{P-1}$ of the difference between the total of the Westcoast portion of Trunk Line's actual legitimate investment in depreciable gas plant and the balance in the depreciation reserve, with respect thereto, both taken at the beginning of the second year;

At such time as the aforesaid export permits or licenses are renewed, extended or supplemented or modified so as to prolong the authorized export period, the unrecovered cost of the plant shall be determined and depreciation rates thereafter

"redetermined by the same method.

(3) Depreciation reserve accounts shall be set up and maintained in accordance with conventional accounting practice and in accordance with the foregoing.

(4) If, as provided in paragraph 3 of the Contract dated as of the 14th day of June, 1960, the said Gas Transportation Contract terminates with respect to Westcoast then the difference between the total of the Westcoast portion of Trunk Line's actual legitimate investment in depreciable gas plant and the balance in the depreciation reserve, with respect thereto, as at such date, shall be added to the total of the Alberta and Southern portion of Trunk Line's actual legitimate investment in depreciable gas plant."

THE WESTCOAST ALBERTA CONTRACT

The Westcoast Alberta contract dated November 9, 1961 provides for depreciation as follows:

" (b) Depreciation: One-twelfth ($1/12$) of the annual depreciation expense computed by the application of annual straight line depreciation rates to the actual legitimate investment in depreciable gas plant. In order to distribute equitably the said investment over the lifetime of the said pipeline system, the applicable annual depreciation expense shall be $\frac{1}{P-(n-1)}$ times the difference

between the total said investment and the balance in the depreciation reserve, both taken at the beginning of the nth year. (The Symbol P represents a number equal to the number of years, calculated from the beginning of the first billing month hereunder, in (a) the terms of this contract, or (b) the dollar weighted average of the estimated physical life of the components of the depreciable gas plant, whichever is shorter. The symbol n is the number of the particular year for which the annual depreciation expense is being calculated, the first of which commences simultaneously with the period represented by the symbol P. For example:

First year depreciation: $\frac{1}{P}$ of the total investment

Second year depreciation: $\frac{1}{P-1}$ of the difference between

the total investment and the balance in the depreciation reserve, both taken at the beginning of the second year.

A depreciation reserve account shall be set up and maintained under conventional accounting practice in accordance with the foregoing.

* * * * *

One of the items of cost included in each of the contracts which Trunk Line has with the complainants is provision for the payment of taxes.

The Trans-Canada contract, dated January 27, 1957, at p. 17 thereof, contains this provision:

"(c) TAXES:

Accruals recorded for such month with respect to income and other taxes associated with Trunk Line's ownership and operation of the gas gathering and gas transmission system described in paragraph two hereof and adjustments of accruals for tax expenses previously billed."

The Southern and Westcoast contract, dated June 14, 1960, at p. 34 thereof contains this provision:

"(d) Taxes: Accruals recorded for the billing month with respect to income and other taxes associated with Trunk Line's operations hereunder, adjustments of accruals for tax expenses included in previous bills and any taxes paid but not included in previous bills."

The Westcoast Alberta contract, dated November 9, 1961, at p. 22 thereof contains this provision:

"(d) Taxes: Accruals recorded for the billing month with respect to income and other taxes associated with Trunk Line's operations hereunder, adjustments of accruals for tax expenses included in previous bills and any taxes paid but not included in previous bills."

* * * * *

The business of Trunk Line is administered by a Board of seven directors, five of whom are elected by the shareholders who hold Class "B" common shares of Trunk Line, the only shares with voting rights. The remaining two directors are appointed by the Lieutenant Governor in Council.

The Act requires that the Class "B" voting shares be allotted in the following amounts to the various segments of the industry and to the directors appointed by the Lieutenant Governor in Council in the following manner:

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Group I	Gas Utility Companies	200 shares	10.0%
Group II	Gas Export Companies	50	2.5%
Group III	Gas Producers	1750	87.5%
Group IV	To the Directors appointed by the Lieutenant Governor in Council	<u>2</u>	
		2002	

(Sec. 6 of the Act)

The number of directors elected or appointed by each of the groups holding the Class "B" common shares is as follows:

Group I	Gas Utility Companies	1	14.3%
Group II	Gas Export Companies	1	14.3%
Group III	Gas Producers	3	42.8%
Group IV	Appointed by the Lieutenant Governor in Council	<u>2</u>	28.6%
		7	

(Sec. 20 of the Act)

* * * * *

The witnesses called by the parties were as follows:

For the complainants:

Robert E. Costigan of Chicago, Illinois, who holds a degree of B. Sc. in Industrial Administration from Yale University and who is a Financial Analyst and a member of the Institute of Chartered Financial Analysts.

Eric J. Hanson, Professor of Economics, University of Alberta, Edmonton; the holder of a Master's degree in Economics, University of Alberta and a Doctorate in Economics from Clark University, Massachusetts, U.S.A.

G. O. Maddock of Northbrook, Illinois, a consultant on general and financial matters; From 1944 to 1960 Vice-President of Duff & Phelps Inc., Chicago, Financial Analysts; From 1961 to 1967 Chief Executive Officer of Quebec Natural Gas Corporation.

For Trunk Line:

F. A. R. McKinnon, a Chartered Accountant residing in Calgary employed by Trunk Line as its Assistant Treasurer.

Walter John Hopson, residing in Calgary and employed by Trunk Line as Vice-President and Treasurer.

Herbert Gordon Pearce, President and Director of Foster Economic Consultants Ltd., Calgary; graduated in 1950 from the University of British Columbia with a Bachelor of Science degree and from the University of Western Ontario in 1952 with a Master of Business Administration degree.

S. Robert Blair, President and Chief Executive Officer of Trunk Line since 1969; formerly the President of Southern; graduated in 1951 from Queens University with a Bachelor of Science degree in Engineering.

Richard L. Johnson, a resident of Chicago, Illinois and President of Middle West Service, Company, Engineering and Management Consultants; graduated from the University of Minnesota in 1950 with a Bachelor of Science degree in Electrical Engineering.

Frank H. Logan, President of Dominion Securities Corporation of Toronto; graduated in 1957 from Princeton University.

Radford L. Schantz, Vice-President of Foster Associates Inc., Washington, D.C., Economic Consultants; a graduate from Syracuse University in Electrical Engineering and a Master's degree in Business Administration from New York University.

James C. Mahaffy, Q.C., former President and Chief Executive Officer of Trunk Line - now retired.

* * * * *

Mr. Costigan testified that he had been requested by Southern and Westcoast to examine the 8 3/4% annual rate of return on the net investment base of Trunk Line, and to form a judgment as to the reasonableness of such a return at this

time after giving due regard to the circumstances of Trunk Line and the gas transmission industry in Canada and the United States, and whether an 8% rate of return at this time is adequate. He said: "A public utility should be permitted to earn a return reasonably sufficient to assure confidence in its financial soundness, maintain and support its credit, and to enable it to attract the capital necessary for the proper discharge of its public duties. The return to the equity owner should be commensurate with return on investments in other enterprises having corresponding risks."

He expresses the opinion that gas and transmission companies ordinarily have the risk of gas supply but that Trunk Line, with its cost of service contracts, is assured of full recovery of its investment. He considered that Trunk Line's market growth was only inhibited by the lack of availability of reserves of gas in excess of Alberta's requirements. He pointed out that under the cost of service contracts Trunk Line's return is based on its rate base investment irrespective of the volume of gas transported on behalf of its customers. This, he considered, protected Trunk Line from swings in the economy or the weather in the ultimate customer service area. Similarly, he considered the cost of service contracts provided Trunk Line with protection against increases in wage and material costs.

He said that after giving effect to the sale by Trunk Line of:

- (a) \$20 million 9 3/4% sinking fund debentures, Series 2 due in 1990 in June 1970;
- (b) The proposed sale of \$18 million 9 1/2% sinking fund debentures, Series 3 in December 1970;

Trunk Line's capitalization ratios at December 31, 1970 would be:

Total debt including \$0.5 million short-term debt	72.3%
Preferred shares	12.3%
Common share equity	15.4%

He considered these ratios reasonable for a company such as Trunk Line, giving as his reason:

"..... Other companies operating under cost of service contracts such as does Trunk Line are often capitalized with relatively thin Common equity ratios.

This is not unusual because the effect of the cost of service contract is to render the rate of return, or the return available on the securities of these companies, an operating expense of the companies with which it has cost of service contracts. The cost of service contract can be regarded as coming ahead of the investment return of the contracting companies."

He said: "the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks." adding:

"..... Common stock does not carry a stated or implicit dividend, unlike the interest payment requirements on bonds and dividends on Preferred stock. Common stock investors buy on expectations - expectations as to future earnings, expectations as to future dividends, and expectations as to future market price. The 'cost' to the Common equity owner involves the question of the return foregone on alternative investments as well as the anticipated return on the investment effected. These expectations differ from investor to investor and, in my opinion, do not lend themselves to mathematical formulae."

In Exhibit 34 he lists a group of six pipe line companies which he considered representative for comparative purposes. This exhibit indicates that for the year 1969 the group median indicated a return on average equity of 8.07% with a capitalization ratio of 25.8%.

A further schedule, Exhibit 35, indicates that for a group of seven Canadian gas distributing companies the median average return on equity for 1969 was 11.99% with an equity capitalization rate of 34.7%.

He reaches the conclusion that the common share equity of Trunk Line, amounting to 15.4% is a reasonable ratio. At p. 156 of the testimony he says:

" All of the factors I have previously discussed tend to support my conclusion that the degree of business risk to Trunk Line's investors is minimal. Capital structure also is a consideration in appraising the risk to the equity owner, of course. The holders of the Company's debt and Preferred stock have a prior claim on earnings and assets of

"the Company and the financial risk on the Common stock increases inversely in relation to the Common equity ratio. However, as I have said earlier, in my opinion, the capitalization ratios of Trunk Line are reasonable and the financial risk represented by the 15.4% Common stock equity is more than compensated by the absence of business risks for Trunk Line. Thus, overall, I would regard the 'total' risk of the Trunk Line Common equity owner to be certainly no greater than that of the equity owner in other companies engaged in the natural gas industry having higher Common equity ratios and thus lower financial risks, but whose business risk is substantially greater than Trunk Line's."

He said, based on data supplied to him by Trunk Line, his estimate of the return on average common share equity for the calendar year 1970 on an 8% return on the net investment rate base would be about 16.7%.

For the twelve-month period, July 1, 1970 to June 30, 1971, on an 8 3/4% return on the net investment rate base the return on equity would be about 18.5% and about 13.9% if the return on the net investment rate base were reduced to 8%. Particulars of the calculations are contained in Exhibit 38.

* * * * *

Dr. Hanson said he had been requested by Trans-Canada to examine the 8 3/4% annual rate of return fixed by the directors of Trunk Line to be applied to its net investment rate base and to give the Board his opinion as to the justness and reasonableness of such return.

On being asked what considerations entered into the determination of the rate of return, he said:

"Given a rate base estimated to equal the actual investment of the utility in property used and useful in serving the public, less accrued depreciation and plus a reasonable allowance for working capital, the return has to be set at such a level as to support the investment actually made. It should preserve the financial integrity of the utility, assuming the capital is not inflated and that the industry itself is on a sound economic basis. The rate of return takes into consideration the fixed and contingent obligations, such as interest on bonds and dividends on preferred stock. It must also take into con-

"sideration the earnings required to maintain the market price of the common stock at a level which attracts further investment in that stock at costs which are fair to the consumer."

He said a valuable and useful guide in gauging the rate of return required to attract capital is the relationship of the book value of common shares to market price:

"..... A rate of return for well-established, well-run utility company which is adequate to meet the contractual obligations of the senior securities, and which provides enough to keep the market price of the common stock at a reasonable level above the book value per share is sufficiently high to attract capital. That is, the company should be able to sell additional common stock at a price at least equal to, or somewhat above the book value per share."

He considered the companies providing the best comparisons in determining the rate of return of a utility company consisted of sample groups of utilities with similar characteristics. He said:

"..... The average rates of return of such companies provide a close comparable earnings test and a rough approximation of the level of return required. In short, other similar utilities provide the best comparisons."

And continuing:

"A rate of return will assure financial integrity if it enables the company to pay interest and preferred dividends on outstanding obligations according to specified contractual rates. Failure to meet such contractual obligations results in an inability to attract capital at favourable rates. The rate of return should also provide for the maintenance of the market value of the common shares at a level reasonably above book value."

In reviewing the growth in Trunk Line's capitalization, particulars of which are contained in schedules which he prepared and which were entered in Exhibit 39, the comparisons at December 31, 1960 with December 31, 1969 indicate increases in the various classes of capital of Trunk Line as follows:

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\$ x 10⁶

	Dec. 31 1960	Dec. 31 1969	Times Increase	Percentage Proportion in Total Increase
Common share equity	\$17.931	\$49.428	2.8	16.5%
Preferred shares	15.000	44.548	3.0	15.5%
Long term debt, bank loans and short term notes	47.000	176.980	3.8	68.0%
Total capitalization	\$79.931	\$270.956	3.4	100.0%

Dr. Hanson expressed the opinion that Trunk Line is a highly favoured company in the capital market. In support of this opinion he refers to Schedule C-5 of Exhibit 39 which indicates that of eight Canadian utility companies which he selected, the 1970 average bond yield based on October 2, 1970 prices indicate a range of from 8.77% for Trunk Line with the others at higher rates of which the highest was 9.87% and the lowest 9.08%.

In considering the levels of rate of return on common equity Dr. Hanson selected a group of utility companies engaged in gas transmission, gas distribution and electric power which he used for comparative purposes. The rates of return which the companies in this group earned on their common share equity is depicted on Schedule F-7 of Exhibit 39. In discussing this schedule he said:

" Schedule F-7 sets out rates of return on the common stock equities of the companies for the five-year period 1965 to 1969, the averages for this five-year period, and the averages for the whole ten-year period. For the five-year period, 1965 to 1969, the average for the gas distribution group was 13.2 per cent. The electric power group averaged 10.9 per cent; excluding Saguenay Power and West Kootenay it averaged 12.2 per cent. The gas transmission group averaged 10.9 per cent, with the Alberta Gas Trunk Line Company far ahead of the others with 16.7 per cent. Bell Canada averaged 7.7 per cent and the five largest telephone companies in Canada as a group, 8.9 per cent, but the average for all of the 21 companies shown in Schedule F-7 was 11.8 per cent.

Q What were the ten-year averages which I suppose --

"A These are shown in the last column. The return on common stock equities for the ten-year period, 1960 to 1969, was 12.2 per cent for the gas distribution companies. It was 11.0 per cent for the electric power companies and if you exclude Saguenay Power and West Kootenay Power it was 12.4 per cent, which makes it close to the gas distribution group. The average for the gas transmission companies was 10.1 per cent. The Alberta Gas Trunk Line Company was far above this with 15.7 per cent. The average for all of the companies was 11.3 per cent. Bell Canada averaged 7.3 per cent and the five largest telephone companies in Canada 8.9 per cent.

Q What factors affect the level of the rate of return on common stock equity?

A Given adequate and reliable earnings on total capitalization, and other things being equal, the higher the common stock equity the lower the rate of return on that equity tends to be. Conversely, the smaller the equity, the higher the rate of return tends to be.

Q What are some other factors.

A The differing business risks of the companies affect their policies with respect to the injection of common equity capital. Thus a company like the Alberta Gas Trunk Line Company can have a low common stock equity with less financial risk than other utility companies. The stages of development of the companies have an effect. In general, the gas transmission companies in Canada are still young, and the earnings on their common stock equity, except for the Alberta Gas Trunk Line Company, have been relatively low."

On being asked for his conclusions from an examination of the rates of return on the common stock equities of the twenty-one Canadian utility companies referred to in F-7 of Exhibit 39 he said:

"I conclude that there are many factors which affect the rate of return on the common stock equity. One of these is the common stock equity ratio, but it is not necessarily the most important in any given situation. To measure more or less precisely the effect of the relative size of the common stock equity upon the rate of return upon the equity, it would be necessary to obtain a sample of companies with similar business risks. There are not enough companies in Canada to provide an adequate statistical group. Other factors affecting the rate of return on the common stock equity are geographical differences throughout a large country like Canada, differences in market situations, dif-

"Differences in stages of development, differences in management, and differences in public regulatory procedures. This means that the descriptions that I have provided here, considering each company in its own context, are more significant than general statistical analyses using a formula of some kind."

and at p. 227:

"..... In general, I would suggest that 13 to 14 per cent on the common stock equity should be the maximum rate applied in fixing the rate of return of any utility subject to regulation. This follows from an examination of the data, and also from the point of view of having a balanced capital structure."

In dealing with the expectations of investors, he said:

"The ratio of market price to the book value per share provides an indication of the expectations of investors with regard to an individual company's common stock. A high ratio indicates that investors expect the company to produce a substantial growth in earnings in the future, while a low one points to an expectation of slowly-growing, static, or declining earnings. A direct test with respect to the earnings requirement of a common stock is that the rate of return should be set at a level which maintains the market to book value ratio considerably above par. This is to ensure that the company can raise new common stock capital at least at the book value level."

He includes in Exhibit 39, Schedule F-11, to indicate the relative relationship of the market to book value ratio of Trunk Line compared with fifteen other utility companies in the group which he selected.

This schedule, together with Schedule F-12, includes the number of times the median market price of common shares for the year 1969 is of the book value of the common share equity at December 31, 1969 and the comparative earnings-price ratios of the common shares, as follows:

	<u>Times Market Price is of Book Equity</u>	<u>Earnings- Price Ratio</u>
Gas Transmission Group (including Trunk Line)	2.21	4.3
Gas Distribution Group	2.30	6.3
Electric Power Group	1.29	8.1
Trunk Line	2.76	5.5

Dr. Hanson provided Schedules G-1 and G-2 of Exhibit 29 to indicate the performance of Trunk Line common shares in the market for each of the years 1960 to 1969 and for a period of 1970. These schedules indicate that for the years 1963, 1966 and 1969 the common shares reflected the following:

	<u>Market Price</u>			<u>Times Market to Book</u>	<u>Earnings Per Share</u>	<u>Earnings Price Ratio</u>	<u>Dividend Yield to Market</u>
	<u>High</u>	<u>Low</u>	<u>Median</u>				
1963	\$31.63	\$26.25	\$28.94	3.21	\$1.36	4.70	3.46%
1966	\$39.25	\$28.87	\$34.06	3.33	\$1.80	5.28	3.52%
1969	\$46.00	\$36.00	\$41.00	2.76	\$2.27	5.54	3.66%

He summarizes his conclusions as to the rate of return requirement for Trunk Line's equity capital at p. 234 of the transcript as follows:

"A Assuming a price of \$40.00 per share, the current market price is \$47.00, but assuming a price of \$40.00 per share on the basis of 1969 earnings of \$2.27 per share, it would be about 5.7 per cent, that is the common stock capital would be substantially below the cost of debt capital and preferred stock capital.

Q In your opinion, what is the minimum rate of return to be allowed on the common stock equity?

A The rate of return on the common stock equity needs to be fixed at a level above the current cost of debt capital. Currently this is from over 9 per cent to over 10 per cent for the major utilities in Canada. The rate of return for the Alberta Gas Trunk Line Company on its common stock capital needs to be over 10 per cent in order to attract capital, that is it needs to be more than its debt capital cost, current cost, and this is also the case for the other utilities. It needs to be considerably more than 10 per cent, however, in order to provide the required coverages of debt charges and preferred dividends.

Q What is your conclusion with respect to the rate of return on the common stock equity of the Alberta Gas Trunk Line Company?

A Well, let us summarize the factors discussed which indicate the favoured position of the company. First, the demand or market conditions are very favourable, growing, and relatively stable within that growth.

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" Secondly, the supply and production conditions put the company in a favourable condition. Third, the nature of its contracts for recovering costs of all kinds make the whole operation one of the most certain and stable of businesses. In other words, the company has relatively low business risks. My conclusion is that the rate of return on the common stock equity for the year from July 1st, 1970 to June 30th, 1971 need be no more than 13 per cent on the equity as at December 31st, 1970, in order to attract both debt and equity capital."

At the conclusion of his direct testimony Dr. Hanson tendered Exhibit 40 indicating an over-all return on capital of 9.02%. This schedule is set out below:

WEIGHTED RATE OF RETURN
THE ALBERTA GAS TRUNK LINE COMPANY LIMITED
JULY 1, 1970 TO JUNE 30, 1971

CLASS OF CAPITAL	PROPORTION %	RATE %	COMPONENT WEIGHTING
Common Stock Equity	15.4	13.00	2.00
Preferred Stock	12.3	5.03	0.62
Debt	72.3	7.47	5.40
TOTAL CAPITAL	100.0		8.02

SOURCE: Based upon capitalizations as at December 31, 1970 (Schedule G-3) and income data provided by The Alberta Gas Trunk Line Company Limited in Exhibit 20.

At p. 244 of the transcript he says:

"It is my considered conclusion that an overall rate of return of 8 per cent would be adequate, fair and reasonable. This rate would maintain the financial integrity of the company; it would attract capital, and it is comparable to the earnings of similar companies. As I have indicated in earlier schedules, an overall rate of return of 8 per cent will give the shareholders of Alberta Gas Trunk Line Company a rate of return of the equity exceeding markedly that enjoyed by the shareholders of any other Canadian gas transmission company, and exceeding substantially the average rate on the common stock equity of the 21 gas and electric companies shown in the exhibit. And this notwithstanding the minimum risk features of the company resulting from its cost of service contracts."

* * * * *

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Mr. Maddock, at p. 251 of the testimony, outlined the factors he considered in reaching his conclusions. He said:

" In reaching my conclusions, I examined a number of factors which I considered pertinent, including the following:

1. Terms and provisions of outstanding securities affecting the issue of additional securities and payment of dividends.
2. The capital structure of Trunk Line at June 30, 1970 and as projected by it to December 31, 1970.
3. Earnings coverage for interest and dividends.
4. The relative 'risk free' characteristics of the securities of Trunk Line by reason of 'cost of service' provisions of transportation contracts between Trunk Line and the shippers.
5. Ability of Trunk Line to finance its near term requirements.

Q The first of the factors you mentioned relates to the terms and provisions of outstanding securities of Trunk Line. Would you please comment on that subject?

A I have examined the principal business provisions of the several instruments under which Trunk Line has issued first mortgage bonds, secured debentures, unsecured debentures and preferred shares. I will now paraphrase such provisions in layman's terms as briefly as possible.

The issue of additional long term debt securities, that is, mortgage bonds and debentures, is subject to a provision that on a pro forma basis the resultant total capitalization must be at least 1 1/3 times funded obligations, which term means the sum of all mortgage bonds and debentures. This, in other terms, means that mortgage bonds and debentures may not exceed 75 per cent of total capitalization. In addition, the issuance of such long term debt securities are subject to an earnings coverage provision which requires that on a pro forma basis net earnings available for interest shall be at least 1 1/2 times the combined interest on mortgage bonds and debentures. With respect to mortgage bonds alone the earnings provision requires a 2 1/4 times annual interest requirement.

As will be shown later Trunk Line at December 31, 1970 is closely approaching both the capitalization ratio limitation and the minimum earnings coverage requirement. Both of these tests must be met which would indicate that in the near future additional equity must be injected

" into the capital structure of Trunk Line if substantial funds for expansion are required and are to be provided by additional borrowing.

The right to issue additional secured debentures no longer exists and will not exist so long as unsecured debentures remain outstanding.

Trunk Line has authorized preferred share capital of \$200-million. Additional preferred shares may be issued providing that on a pro forma basis (1) total capitalization shall be at least 1 1/10 times the aggregate of all funded obligations and preferred shares to be outstanding and (2) net profits shall be at least 1 1/2 times the annual dividend requirement. There is no restrictive provision limiting the payment of dividends on preferred shares.

Trunk Line has authorized (Class A) common share capital of 8,000,000 shares of which approximately 3,335,000 are expected to be outstanding December 31, 1970, (As shown in Exhibit 10). There are no restrictive provisions limiting the issuance of additional common shares. However, there are anti-dilution provisions in the presently outstanding convertible debentures and convertible preferred shares. In the case of the 7 1/2% Series 1, convertible unsecured sinking fund debentures, a conversion price equal to \$40.00 per common share exists and any subsequent sale of additional common shares at a price lower than \$40.00 per share would require an appropriate adjustment of this conversion price. Similarly, the 5 3/8% Series D, of \$35.71 per common share and any subsequent sale of common shares below that level would also require an adjustment in the conversion price.

With respect to limitations on the payment of common dividends, the terms of the Series D first mortgage bonds limit such dividends to payments out of surplus accumulated after December 31, 1968. In the case of all series of first mortgage bonds, no dividends may be paid unless total capitalization exceeds 1 1/3 times funded obligations.

In addition the Series C and Series D preferred shares restrict the payment of common dividends unless total capitalization exceeds 1 1/10 times the aggregate of all funded obligations and all preferred shares then outstanding."

In coming to his conclusions concerning the reasonableness of the provisions generally, he said:

"In the first place, of course, the provisions have been set and could not be modified without considerable difficulty, if at all. Considering the risk characteristics of the securities of Trunk Line, it appears to me

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" that the various business provisions of the securities respecting the issuance of additional securities and the payment of dividends may be considered as generally reasonable.

In the case of the first mortgage bonds, which may be issued on the basis of 70 per cent of the cost of property additions, there are many utility issues which limit the bonding power to 66-2/3 per cent or even 60 per cent in some cases of property additions. The earnings coverage requirement of 2½ times for first mortgage bond interest also appears reasonable to me. The 1½ times earnings coverage requirement for the issuance of additional unsecured debt might be regarded as slightly on the high side, but I would not term it unreasonable.

The provisions relating to issuance of additional preferred shares also are reasonable and are widely covered under current conditions. I also feel that restrictions on the payment of dividends on the common shares are fair and reasonable.

Considering the provisions as a whole, it is my feeling that Trunk Line should have no particular difficulty in selling additional securities and in maintaining a reasonably well balanced capital structure from the standpoint of the restrictions and limitations now existing."

and at p. 256:

" On the basis of projections by Trunk Line to December 31, 1970, which includes a proposed current issue of \$18 million of additional debentures, it would appear from the capitalization ratio and earnings coverages that there would exist very little margin for the issuance of additional debt securities until additional equity is provided, and it would seem to me that any plan of financing after 1970 should certainly look toward the sales of additional common shares. However, I do not have information with respect to capital expenditures expected beyond 1970 so it would be inappropriate for me to comment specifically on any financing program for 1971 at this time."

* * * * *

Mr. McKinnon outlined Trunk Line's estimate of revenue for the years 1970 and 1971 based on the increase in the rate of return to 8 3/4% on July 1, 1970. Discussing Exhibit 49, which sets out details of the estimates, and dealing with the

1971 estimates, he said at p. 646:

"The construction programme using the projection for '71 is \$71,435,000.00. Based on this estimate and the schedule of expenditures the timing and the amounts of new financing was determined. This new financing is in two parts: First, a proposed sale on April 1, 1971, of common shares, which would result in proceeds estimated at \$20,300,000.00; secondly, a proposed sale of 9 per cent first mortgage bonds, Series E, on July 1, 1971, in the amount of \$46,000,000.00. The balance of the funds required would be generated internally. An 8 3/4 per cent of return was used for the entire year of 1971."

The operating profit for each of the years 1970 and 1971 as compared to 1969 as shown in Exhibit 49 and the net income available to the common shareholders after debt charges and dividends on preferred shares is as follows:

Million Dollars	Actual	Estimated	
	1969	1970	1971
Operating profit	\$17.004	\$25.044	\$32.037
Net income available to common shareholders	\$ 7.540	\$ 8.657	\$11.378

Mr. Hopson testified that about 22% of the Class "A" common shares were held by shareholders residing in Alberta numbering approximately 15,000. This is supported by information in Exhibit 25 which was requested by the interveners represented by Mr. Gibbs, which, in summary, shows:

	Shareholders		Shares Held	
	Number	% to Total	Number	% to Total
Alberta	15,074	68.72	725,491	21.63
Ontario	2,850	12.99	1,382,582	41.22
British Columbia	1,674	7.63	152,721	4.55
Quebec	789	3.60	666,131	19.86
Other Provinces and Territories	953	4.35	337,695	10.07
	21,340	97.29	3,264,620	97.33
U.S.A.	487	2.22	70,578	2.10
Other Foreign countries	108	0.49	19,116	0.57
	21,935	100.00	3,354,314	100.00

He explained that the Trans-Canada' contract remains in force until October 31, 1989 and for as long thereafter as requisite authorizations enable it to operate under the contract. Trans-Canada's present authorization to remove natural gas from Alberta extends to October 31, 1994.

Southern's authorization extends to October 31, 1992 and Westcoast's authorization extends to December 31, 1981.

All of the permits authorizing the removal of gas from Alberta are subject to the condition that the gas shall be delivered through the facilities of Trunk Line.

In referring to the methods of financing additions to plant facilities Mr. Hopson said at p. 662:

"It has been our practice to finance plant additions largely by the issue of interest bearing debt securities. This has been done because the interest expense is an allowable deduction for income tax purposes. The effect of this method of financing has been beneficial to the shippers, as it has reduced the cost of service. Further financing has been obtained from time to time by the issuance of preferred shares. Until recently, when the Federal Government introduced its White Paper on taxation, it was possible to sell preferred shares with a dividend rate somewhat less than the cost of comparable interest bearing securities, because the dividends on these shares are eligible for the dividend tax credit."

Since the beginning of 1970 Trunk Line has raised \$121 million in long-term debt of which \$35 million is convertible into common shares. He said that Trunk Line had hoped to raise \$25 million in debentures in December but because of coverage tests required under the trust indenture the issue was reduced to \$18 million.

He said that Trunk Line had taken full advantage of capital cost allowances and other deductions permitted under the provisions of the Income Tax Act with the result that Trunk Line, other than an amount of \$7,250 paid in 1966, had paid no income tax since its incorporation. He said the action of deferring the payment of income taxes had accrued to the benefit of Trunk Line's customers.

He pointed out that if Trunk Line used the tax alloca-

tion basis the cumulative amount of deferred tax credit would aggregate \$35 million at this time and, assuming a corporate tax rate of 50%, the tax component billed to Trunk Line's customers would have aggregated \$70 million. He said Trunk Line is continuing to study the matter of income taxes with the shippers for the purpose of resolving a liability of extreme magnitude to Trunk Line.

He also outlined the procedures used in determining the various components of cost making up the cost of service billing explaining that service department costs, mainly for departments centralized at the head office of Trunk Line, is done on a predetermined allocation basis developed once a year with meetings of representatives of the shippers.

With respect to financing he said that of an original arrangement for the placing of \$60 million 8 3/4% first mortgage sinking fund bonds, \$15 million were issued in 1969 and the remaining \$45 million in April 1970. In February 1970 \$25 million 7 1/2% convertible sinking fund debentures were sold and in June 1970 \$20 million 9 3/4% sinking fund debentures were sold at 99 and in December 1970 \$18 million 9 1/4% sinking fund debentures were sold at par. This, he said, represented a total of \$137.4 million in terms of Canadian funds at a cost of 8.86% per annum without considering the convertible feature of the convertible debentures.

* * * * *

Mr. Pearce said he had been retained by Trunk Line to prepare an independent assessment of business uncertainty relating to its operations. He said there was a difference between business uncertainty and financial risk and that he was dealing primarily with business uncertainty.

He expressed the opinion that the cost of service portion of the gas transportation contracts merely represented the formula which Trunk Line uses to determine its charge for transportation and the arrangement between the parties does not eliminate the business uncertainty facing Trunk Line. He was

of the opinion that Trunk Line faced two broad types of business uncertainty: First, it was affected by uncertainties facing its customers, and secondly, there were certain types of business uncertainties unique to Trunk Line. He disagreed with a suggestion made by Mr. Maddock that the contracts guaranteed a return to Trunk Line.

In referring to the uncertainties facing Trunk Line relating to the discovery of major commercial gas reserves in frontier areas of Canada he said at p. 688:

"In my opinion, discovery and development of significant volumes of natural gas outside of Alberta would have much more serious implications for Alberta Gas Trunk Line than it would for the transmission companies and distribution companies operating outside the province. In this regard the prospective natural gas reserves located in reservoirs outside Alberta are quite significant. The Canadian Petroleum Association has estimated Canada's potential reserves of raw natural gas (recoverable by conventional methods) to be 725 Tcf, of which 89 Tcf ultimate raw gas reserves had been found by December 31st, 1969. The CPA regional estimate of potential reserves of recoverable raw natural gas is as follows:

	<u>Tcf</u>
Western Canada Sedimentary Basin	270
Arctic Islands, Coastal Plains and Foxe Basin	261
Eastern Canada Offshore	150
Gulf of St. Lawrence	11
Southern Ontario	2
Hudson Bay	17
West Coast	11
B. C. Interior	<u>3</u>
	725

and at p. 689

" A Major discovery outside of Alberta could certainly alter the overall Canadian supply situation, particularly in meeting incremental natural gas demands. Active exploration is taking place in these 'frontier' areas, particularly offshore East Coast, the Arctic, and the Territories. . . For example, a witness for Shell Canada at the recent NEB export hearings (January 7, 1970, page 1745 of the transcript) testified that his company has undertaken an 18 to 24-well drilling program in the east coast offshore area. This program is estimated to cost \$50,000,000.00 and is to be completed in 1972. Recent published reports concerning the

"recent discovery of gas on King Christian Island suggests that it could be a major gas discovery.

If natural gas is discovered in commercial quantities in these frontier areas, actual movements would depend on a number of factors, including size of the reserves and the laid-down price in end markets vis-a-vis competitive fuels. Ownership of transportation facilities to move this gas to market might include Canadian gas distributors, gas producers and/or transmission companies. If such discoveries are made in these frontier areas, Trunk Line's role in providing transportation services for incremental volumes of gas will likely be reduced.

In my opinion, the gas distributors purchasing Alberta gas will have much more flexibility than either Trunk Line or the transmission companies to take advantage of gas reserves discovered in areas such as east coast offshore."

* * * * *

Mr. Blair, Trunk Line's president, outlined what he considered to be the advantages and disadvantages of Trunk Line on the cost of service basis under which it operated.

Of the advantages he said:

"Well, there is the advantage to us of fairly exact prediction of our contract revenues and which is, of course, most useful for feasibility studies and corporate planning. There is the advantage of increases in operating and maintenance expenses of our company, in that they are reflected directly and immediately into our service billings and, through them, into revenues. There is the advantage than when in financings we commit to debt service payments, interest and principal, or commit to the payment of preferred dividends, we can show a contract commitment from one or more shippers to pay us future transport service charges in amounts which can be related to the coverage of those finance service commitments."

Of the disadvantages he said:

"A major disadvantage is that, as a company, we receive no benefit to our income statement from the economies which our company manages. These economies have been numerous and important in the history of our company's operations, and are continuing. Because I have been with the company a relatively short time myself, I can perhaps properly enough speak enthusiastically about a number of the things that have been done.

" In engineering design - I would like to divide these economies into two general areas, one of engineering design, which, with the economy reflected in a lower capital cost, and the other in the operating and maintenance area, reflected in lower operating and maintenance current costs.

In engineering design the company has become truly a pioneer within North America, within the industry in North America, in the mid-winter low temperature construction and testing of large inch lines. I just noticed this morning the latest OilWeek has an excellent article of technical, technological articles on the basis of a report by John Jamieson, the supervising engineering man in our company, on the hydrostatic testing of pipelines in mid-winter low temperature conditions, in which the company has led. Innovations in this general area, the mid-winter low temperature area, have produced substantial savings in capital costs of facilities built in northern muskeg terrain. Capital cost savings have also been accomplished by the company through design and employment of portable compressors and gas measurement units, a reduction in compressor site buildings and so on. I won't try to catalogue all such achievements in the company's engineering division in this testimony, but just to point out, and just as it should be, the company's design engineers are aggressive in pursuing economies of capital cost. And under the cost of service basis, the service charges, each time they so succeed professionally, the effect has been translated directly and entirely into a reduction of capital cost and so of consequent charges to our customers.

Similarly, in the area of operating and maintenance expense, the company's operating division has moved to automation of measurement and quality control equipment, to a computer-controlled supervisory system, to remote control of compressor and meter stations, in substantial numbers of about eleven compressor stations and sixty meter stations presently, all of which has been done after analysis to see if such action would reduce costs, and which we are satisfied has reduced costs.

Of course, this sort of thing should be and is going on in the industry as a whole, but we believe that this company has been relatively advanced in the industry in seeking out and effectively applying such new technology. I know that the operating division has also periodically reviewed the organization and distribution of its personnel and re-organized to produce the effect of reduction in growth of manpower, and so reduction in corresponding costs. And, again, all such operating and maintenance economies have been reflected immediately and in entirety in the billing reduced charges to our customers."

On being asked by counsel for Trunk Line:

"Q Mr. Blair, when we adjourned you were dealing with the subject of the disadvantages of the company's cost of service arrangements, as you saw them, and you touched on the fact that the engineering economies we achieve are translated directly into the customer company's benefits, and likewise on operation and maintenance expenses; and you have detailed some of those which have been reflected or are reflected directly and entirely into our customers in the form of reduced charges; would you carry on with that stage of your testimony, sir?"

he replied:

"Well, I put some emphasis on those economies because I note that there was mention earlier in the hearing of the cost, of the effect of the cost of service of rate in giving us a ready adjustment for increased cost, and I thought it deserved the emphasis; but there is another side to the same coin, and while it is quite true that our, both our operating economies and economies of lower capital costs are reflected directly and entirely in those billings; and I was really listing, still in the answer of listing disadvantages to the company of the cost of service method, and in that context I would also like to remind that our whole flexibility for producing income under the cost of service charge, basis of our transport charges, that whole flexibility becomes concentrated on the single billing item of rate of return; which I regard as a disadvantage of the cost of service basis; when that one item 'rate of return' is not sufficient there then becomes literally nothing else that we can do at all to enhance income from the gas transports service. Finally, I would say that a disadvantage which should be enumerated of the cost of service basis as it is applied to our company is that it does produce a very thin cash flow situation."

In discussing Trunk Line's capital expenditure budget for 1971 he said:

" For 1971 itself where, of course, much more detailed information is available, our total capital expenditures, as we have estimated them in the later part of 1970, aggregate over \$100 million. Our tentative capital budget for 1971 is \$111 million. That is just a tentative budget, this \$111 million, for the construction of new facilities pursuant to the service requests of our contracted customers, and there will possibly be some other multi-million dollars of capital expenditure in the year. With respect to that \$111 million, our engineering division has produced final and definitive estimates, considering the service requests of our customers, the most economical design in each case to provide the service comparing the looping alternatives versus adding additional compression, the integration of customers' requests and so

"On. And then from such comparative studies they have selected the design which appears to be the more economic for each aspect of the expansion, and our engineering division has performed fully definitive capital cost estimates based on this design, employing factors, employing cost factors from the experience of the company and current quotations."

Discussing business risk he said at p. 727:

"Well, perhaps the biggest factor of all is that we are making these huge investments in gas plants and encouraging corresponding very large commitments in debt financing, and are doing all this in one limited and local role of service through reserve development. As I discussed previously, by compliance with our statute, we confine our operations to the Province of Alberta, and by policy of the company we have confined them to the contract carrier gas transport service role within the province. And all of the company's eggs have been put in this one basket, which is a good basket, but it is just one basket. We have taken none of the advantages of determining our own market strategy or advantage, or the mobility of determining the arena of our future operation. In the long term, we have to think of everything in the long term, these are very long-term financing commitments that we are making; but, in the long term, if there should be a relative setback to Alberta as the predominant base, from its present position of the predominant base for Canadian gas supply, our company could even, in my view, could become within the industry in a position of rather special risk. I believe that in the long term, in an industry such as this, and again relating to this risk as among companies in the industry- I say that because, I suppose, other types of companies might look at the whole industry and say 'This is a stable and healthy industry', and it is, and that is great. But, as far as comparisons go within the industry, I believe that in the long term the greatest security of operation tends to be somewhat of the, rather more of the consumer end of the marketing arrangement, and it is part of the history of Canada that, necessarily, the volatility of the risk of major change in economic activity, tends to be at the reserve or the supply end of it. If there do become some major changes in the patterns of energy use and supply market orientation, it is the supply area that I would expect to experience the greater change of business activity. So that on a relative basis I would say at least this, that where there is risk to the distribution company or the connecting wholesaling company, there is probably at least as much risk ultimately to the company in our role as a gas-gathering company.

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Mr. Johnson testified he had been asked by Trunk Line to determine the revenue required by it for the years 1970 and 1971 to adequately cover its outstanding financial obligations. He said the concern for adequate revenues under Trunk Line's contracts largely became a matter of securing an adequate rate of return on net plant rate base for property devoted to serve Trunk Line's customers.

He said that since 1958 Middle West Service had prepared the earnings certificates required under the provisions of Trunk Line's indentures and the furnishing of analyses and recommendations as to the necessary minimum rate of return.

In Exhibit 52 he sets out a schedule of plant growth which shows the estimated net plant balance at the end of 1970 to be \$350.3 million, an increase of 27.5% over 1969, and at the end of 1971 a net plant balance of \$413.0 million, an increase of 17.9% over 1970. During this period he estimated the embedded cost of long-term debt as having increased from 6.91% in 1969 to 7.50% in 1970 and 7.69% in 1971. He said the 1971 rate for cost of debt used in these calculations was 8½%.

Included in Exhibit 52 is a schedule which shows that from 1969 to December 15, 1970 first mortgage bonds and unsecured debentures, having a face value of \$137.395 million in terms of Canadian funds, were marketed at a composite rate of 8.86%, the annual cost of such issues being \$12.175 million. He pointed out that this would have the effect of increasing the embedded cost of debt capital from 5.87% at the end of 1968 to 7.50% at the end of 1970.

His estimates of total capitalization and related ratios is shown on Schedule 5 of the exhibit. This schedule indicates the total capitalization and related ratios at June 30, 1970 and June 30, 1971 to be:

	<u>June 30, 1970</u>		<u>June 30, 1971</u>	
	<u>\$ x 10⁶</u>			
Excluding debt to be repaid within 12 months				
<u>Long Term Debt</u>				
Non-convertible	\$198.3	60.4%	\$209.0	57.6%
Convertible	35.0	10.6	35.0	9.6
	<u>\$233.3</u>	<u>71.0%</u>	<u>\$244.0</u>	<u>67.2%</u>

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	<u>June 30, 1970</u>		<u>June 30, 1971</u>	
	<u>\$ x 10⁶</u>			
<u>Preferred Shares</u>				
Non-convertible	\$ 24.9	7.6%	\$23.6	6.5%
Convertible	<u>18.8</u>	<u>5.7</u>	<u>16.5</u>	<u>4.5</u>
	<u>43.7</u>	<u>13.3</u>	<u>40.1</u>	<u>11.0</u>
<u>Common Equity</u>	\$ <u>51.4</u>	<u>15.7%</u>	\$ <u>79.5</u>	<u>21.8%</u>
Total	\$328.4	100.0%	\$364.5	100.0%

Including long-term debt
and other debt payable
within 12 months

<u>Debt</u>	<u>\$239.3</u>	<u>71.6%</u>	<u>\$251.3</u>	<u>67.8%</u>
<u>Preferred Shares</u>				
Non-convertible	\$ 24.9	7.4%	\$ 23.6	6.4%
Convertible	<u>18.8</u>	<u>5.6</u>	<u>16.5</u>	<u>4.4</u>
	<u>43.7</u>	<u>13.0</u>	<u>40.1</u>	<u>10.8</u>
<u>Common Equity</u>	\$ <u>51.4</u>	<u>15.4%</u>	\$ <u>79.5</u>	<u>21.4%</u>
<u>Total</u>	<u>\$324.4</u>	<u>100.0%</u>	<u>\$370.9</u>	<u>100.0%</u>

In discussing the earnings requirement on long-term debt
he said at p. 763:

"..... The earnings coverages on long-term debt for Trunk Line are substantially controlled by the provisions of the respective Deeds of Trust and Mortgages securing the Company's First Mortgage Bonds, Secured Debentures and its Unsecured Debentures. The provisions with respect to the earnings coverage requirements are similar with one exception to those contained in the indentures of other pipeline companies. These guidelines are greatly influenced by the financial community and in particular by the major insurance companies of Canada and the U.S.A., who are the principal purchasers of such securities. The one exception to the general pattern, as contained in the Trunk Line indentures, is that the earnings test may be based on an estimate of net earnings for a future twelve months period, and reported upon in writing by independent engineering and management consultants approved in writing by the Trustee prior to and in respect to each such estimate. This provision permitting the use of estimated earnings for a future period is a favourable provision of great importance to Trunk Line considering its type of operation. Without this provision Trunk Line could not have issued debt in the amounts presently outstanding. As a result of this provision, requiring an estimate of future earnings in deter-

(underlining added)

"mining the required indenture interest coverages, Middle West Service Company has been involved in providing all of these certificates. Such certificates have been prepared from time to time at the date of issuance of the First Mortgage Bonds, Series B, C, and D, and the Unsecured Debentures, Series 2 and 3. The earnings coverage provisions contained in the Deeds of Trust and Mortgage of Trunk Line are as follows for the First Mortgage Bonds. From Clause 6.01 of Article VI, 'No additional bonds shall be issued by the Company, unless either, at the option of the Company:

- (a) Consolidated net earnings for any 12 consecutive months out of the 18 months next preceding the date of the application by the Company for certification of the additional bonds shall have been at least $2\frac{1}{4}$ times the annual interest requirement in respect of all bonds to be outstanding after the issue of such additional bonds and after any retirements of bonds to be made out of the proceeds thereof; or
- (b) An estimate of consolidated net earnings for any 12 consecutive months out of the 18 months next following the date of application by the company for certification of the additional bonds shall be at least $2\frac{1}{4}$ times the annual interest requirement in respect of all bonds to be outstanding after the issue of such additional bonds and after any retirements of 'bonds to be made out of the proceeds thereof'.

..... For the unsecured debentures, the provisions are as follows, from Clause 10.01 (1) of Article 10.0 - 'It will not issue any additional debentures unless, immediately after such issuance, either at the option of the Company,

- (i) the consolidated net earnings for any 12 consecutive calendar months out of the 23 calendar months next preceding the date of application by the Company shall have been at least $1\frac{1}{2}$ times the annual interest requirements in respect of all funded obligations to be outstanding immediately after such additional debentures are issued, or
- (ii) an estimate of consolidated net earnings for any 12 consecutive calendar months out of the 36 months next following the date of application by the Company for certification of such additional debentures shall be at least $1\frac{1}{2}$ times the annual interest requirement in respect of all funded obligations to be outstanding immediately after such additional debentures are issued.'

..... The term 'consolidated net earnings' as referred to in the indenture provision, represent net earnings

"before income taxes. Since the Company has paid no income taxes, this provision presently has no effect.

..... The Trust Deeds securing the bonds and debentures, and the covenants covering the preferred shares contain the following three additional restrictions:

1. Subject to provisions of Article VI (Earnings restrictions) contained in the Trust Deed securing the First Mortgage Bonds, such indenture further provides that additional bonds may be issued from time to time, but only to aggregate principal amount not exceeding 70% of the cost of property additions or the fair value, whichever is less.
2. The total funded debt, bonds and debentures, which may be outstanding at any time may not exceed 75% of the total capitalization of the Company.
3. The total funded obligations and par value of preferred shares cannot at any time exceed 90.91% of the total capitalization. Accordingly, the total common stock equity, represented by the par value of the common shares, paid in surplus and retained earnings cannot be less than 9.09%."

* * * * *

Mr. Logan, whose firm has assisted Trunk Line in arranging the sale of its debt and equity securities since Trunk Line's incorporation, said that notwithstanding the reasonableness of the tests governing the issuance of debt securities, in those instances where the tests had to be met, Trunk Line has never been able to meet the past interest coverage test for the right to issue its debt securities and has been compelled to rely upon the forward estimate earnings test to be able to arrange debt finance.

He also pointed out that Trunk Line was barely able to meet the forward interest coverage test on the \$18 million of unsecured debentures issued in December, 1970. He said without an upward revision in the rate of return on rate base it will not be possible for Trunk Line to finance future expansion on reasonable terms by issues of its debt securities, nor does he believe that Trunk Line could arrange this amount to finance through issues of its equity securities.

* * * * *

Mr. Schantz said that he had been retained by Trunk Line to submit an independent valuation of the fair return and fair rate of return with respect to Trunk Line over the period July 1, 1970 to December 31, 1970.

In discussing how the contractual arrangements which Trunk Line has with the Complainants bears on the risk characteristics of Trunk Line he said at p. 804:

" First I would note that under this contractual arrangement Trunk Line neither purchases nor sells gas. It only transports gas. Thus Trunk Line in this regard, is more similar to an oil pipeline company, than to a typical gas pipeline company.

Second I would note that under this arrangement the transportation rates charged by Trunk Line have, in recent years, been determined by a strict cost of service measurement. The fact that the rates are determined by a cost of service method is not unusual. Changes in the rates of investor-owned gas pipelines and distributors in both Canada and the U.S. are based, upon application or investigation, on a cost of service determination, and the cost of service typically includes the opportunity to earn a fair rate of return. Even the fact that Trunk Line and its customers have, up to this rate hearing negotiated successfully, the cost of service cannot be considered unique. Utilities and customers often settle among themselves changes in rates without recourse to controverted hearings before regulatory bodies.

Q In your opinion does the cost of service arrangement for determining rates offer Trunk Line any reduction in risk compared to other utilities?

A In my view, the cost of service method of fixing Trunk Line's rates does not reduce the risk for this company comparative with typical utilities regulated on a cost of service basis. This is because any utility continuously has the right to seek regulatory relief if it believes present rates do not provide sufficient revenues to meet the cost of service and provide an opportunity to earn a fair rate of return.

Q But does not the financial strength of the shipper-customers assure Trunk Line that its cost of service will be paid, thereby reducing the risk to Trunk Line, compared to other utilities?

A It is correct that the shippers - Alberta and Southern, TransCanada and Westcoast do undertake to pay Trunk Line for transportation services before the payment of interest or dividends of the shipper companies. But in practice

"and under utility regulatory law these shippers provide the same assurance of payment for taxes, labour, material and services and for natural gas purchased in the field. These payment priorities, in the composite, make up these operating costs which, in utility jargon, are 'above the line.' Depreciation, the recovery or return of capital, is another cost which is above the line. As among these above the line costs, I know of no basis for giving a priority of payment to Trunk Line for transportation services.

In contrast the payment of interest and dividends and the retention of earnings make up those costs which are 'below the line.' In the composite, they constitute the utility return on invested capital.

'Above the line' costs for any utility are paid on a priority basis before any 'below the line' cost.

It is perhaps obvious that the sum of above and below the line costs make up what is called the utility cost of service, with the costs below the line making up the return and the rate of return on capital.

By the same reasoning I would like to observe that gas distributors provide the same priority of payment with regard to purchase of the gas from the pipeline-shippers. Such a priority of payment is provided for both the commodity and transportation component of the gas as delivered to the 'city gate' of the distributor. This is because this payment to pipelines is 'above the line' as far as the distributor is concerned. Thus, regardless of nomenclature, the priority of payment is the same, whether the distributor is paying the pipeline, or the pipeline is paying Trunk Line, or the pipeline is paying the producer.

I conclude that there is no real distinction to be drawn in this regard as between Trunk Line and the shippers. Therefore, we should probe further into some of the fundamental risks attending these several segments of the gas industry in order to test the fundamental strength underlying the shippers' assurances."

In dealing with the risks faced by the Complainants he said:

"..... Most gas distributors serve three classes of customers -- residential, commercial and industrial. In a period of inflation and higher costs of capital, their ability to recover their total cost of service including a fair return is contingent upon the increased costs being passed on in the form of increased rates to their customers within the competitive price framework, if any, created by alternative sources of energy.

In most markets, the sensitive area with respect to price competition exists in the industrial sector. There

"is the risk that certain industrial customers with a relatively high price elasticity will, in due course, shift to another source of energy as a result of a rate increase. There is a further risk that prospective new industrial customers might opt for another fuel for the same reason. These are real risks which do exist, although in a growing number of markets the premium quality of natural gas has been enhanced because of air pollution abatement control.

Furthermore gas distributors, in varying degree, incur risks created by competition from electricity and fuel oil in regards to residential and commercial markets.

Thus, gas distributors do face risks resulting from interfuel competition in consumer markets. The extent to which these competitive factors might adversely affect the distributor's opportunity to earn a fair rate of return, if at all, will vary from market to market.

Interprovincial or Extraprovincial gas pipelines in Canada, by contrast, sell all of their gas to distributors or other pipelines for resale. There are no direct industrial sales, to my knowledge. Furthermore, Canadian gas pipelines do not compete with each other in markets. They have a monopoly with respect to shipment of Canadian gas for resale in Canadian markets. Where such gas is exported to the States there is, in certain markets, competition vs. U.S. gas pipelines who ship gas from the southwest, to the extent these pipelines can acquire additional supplies, and to the extent Canadian authorities approve of increased exports in the future.

Thus, competition with U. S. gas pipelines creates an element of risk for Canadian gas pipelines. To that we must add the risk, once removed, that the gas distributors may not be able to pass on all of the increased costs to their customers. In the case of a pipeline, as with the distributor, this might adversely affect the opportunity to earn a fair return.

Next, we focus on Trunk Line. It has the monopoly of transporting gas from fields in Alberta, but only in Alberta, to the Provincial Border. There are at least three potential risks that Trunk Line might not be able to recover its total cost of service including the fair rate of return. The first is the risk that increased costs cannot be passed on by the pipeline to the distributor to the consumer because of reasons I have previously explained. Second, even if the composite of these costs were passed on to the ultimate consumer, the resulting higher rates might reduce future load growth, adversely affecting distributor, pipeline and Trunk Line alike. Third, unique to Trunk Line, but not to pipelines or distributors, is the risk that gas reserves for future load growth will shift away from Alberta and to gas fields located in other parts of Canada. This would lead to the 'shrinking rate base'

"which is a problem that is the bane of all utilities without exception.

Based on this analysis, it seems to me that as long as Alberta continues to provide the bulk of Canadian gas supplies, the fate of the several segments of the natural gas industry are tied together, and that the risk of not being able to earn the total cost of service including a fair rate of return is interlocked in a domino fashion. That is, the risk of the distributor is tied to the ultimate consumer, the risk to the pipeline is tied to the distributor, and the risk to Trunk Line is tied to the pipeline."

Mr. Schantz submitted Exhibit 53 which sets out data which he used for the purpose of his study. In Schedule 5 of this exhibit he illustrates the intensive capital requirements of Trunk Line. Using 1967 as a base, the schedule indicates it requires 7.16 times Trunk Line's revenue for that year to equal the \$188.3 million of debt, preferred shares and equity capital of Trunk Line in that year. By comparison the oil and gas pipeline companies required 3.50 times, the electric utilities 3.42 times, the telephone utilities 3.53 times and the gas distributors 2.35 times. The wholesale and retail trades and manufacturers, which he also referred to, each had revenues which exceeded their total capitalization in that year. This illustrates the intensive capital requirements of Trunk Line which is a characteristic of utility companies. Mr. Schantz points out that Trunk Line, not being engaged in the purchase or sale of gas, has a capital turnover rate quite different from the gas distribution or gas pipeline companies.

In referring to Trunk Line's capitalization structure he said at p. 829:

" If, for the moment, we focus on Schedule 8, it will be observed that the years 1959 to 1960 were part of the formative years with respect to the capital structure. It was not until 1961 that the capital structure began to assume its rather important characteristics and that capital structure existed essentially through 1967 with respect to the relation between the debt, the preferred and the equity components of the total capital. Over the seven years, from 1961 to 1967, the long-term debt has averaged 69.5% of total capital; the preferred stock has averaged 15.4% of total capital; and, the common stock equity has averaged 15.1% of total capital.

Now, this is a most unusual capital structure.

"Comparative with other utilities, the debt ratio has been high, the preferred stock ratio has been high, and the common stock equity ratio has been extraordinarily low; in fact, one would be hard pressed to find another utility in North American with an equity ratio as low as Trunk Line."

In referring to Trunk Line's capital structure for 1968 to 1970 he said:

"This is shown on Schedule 9, page 11 of Exhibit 53. Perhaps it will be observed that in 1968 the capital structure changed significantly when Trunk Line sold an issue of preferred stock convertible into common stock and in 1970 when Trunk Line sold an issue of debentures convertible into common stock.

As a result the capital structure of Trunk Line now consists of five distinct component parts; non-convertible long-term debt, non-convertible preferred stock, convertible long-term debt, convertible preferred stock and common stock equity.

As shown on Part A of Schedule 9, the relative importance of these five component parts of the capital structure as of December 31, 1970, were as follows: non-convertible long-term debt - 62.1%; non-convertible preferred stock - 7.0%; convertible long-term debt - 10.1%; convertible preferred stock - 5.0%; and, common stock equity - 15.8% for a total capital of 100%."

In discussing the current capital structure of Trunk Line he said:

"In analyzing the current capital structure of Trunk Line, the basic inquiry goes to the treatment of the two convertible issues.

Going first to the discussion of the convertible preferred stock; a 5-3/8% preferred stock was sold in September 1968 by Trunk Line at par in the amount of \$20 million as a rights offering to Class A common stockholders. Each preferred share is convertible into 2.8 shares Class A common stock over the period to July 15, 1980. Conversions of this preferred stock into the common stock commenced to take place in 1969 and 1970 and continues. Of the original issue, some 14% of convertible preferred stock has now been converted into common stock.

There are several reasons which will explain these conversions of preferred stock into common stock. First, the shareholder may be concerned with proposals to revise the federal tax laws adversely affecting the preferred stock position. Second, the shareholder may be seeking to gain liquidity by shifting from preferred to common stock. In any event, he is now converting and there is a reasonable probability that conversion will continue in the future. Therefore, from the point of view of finan-

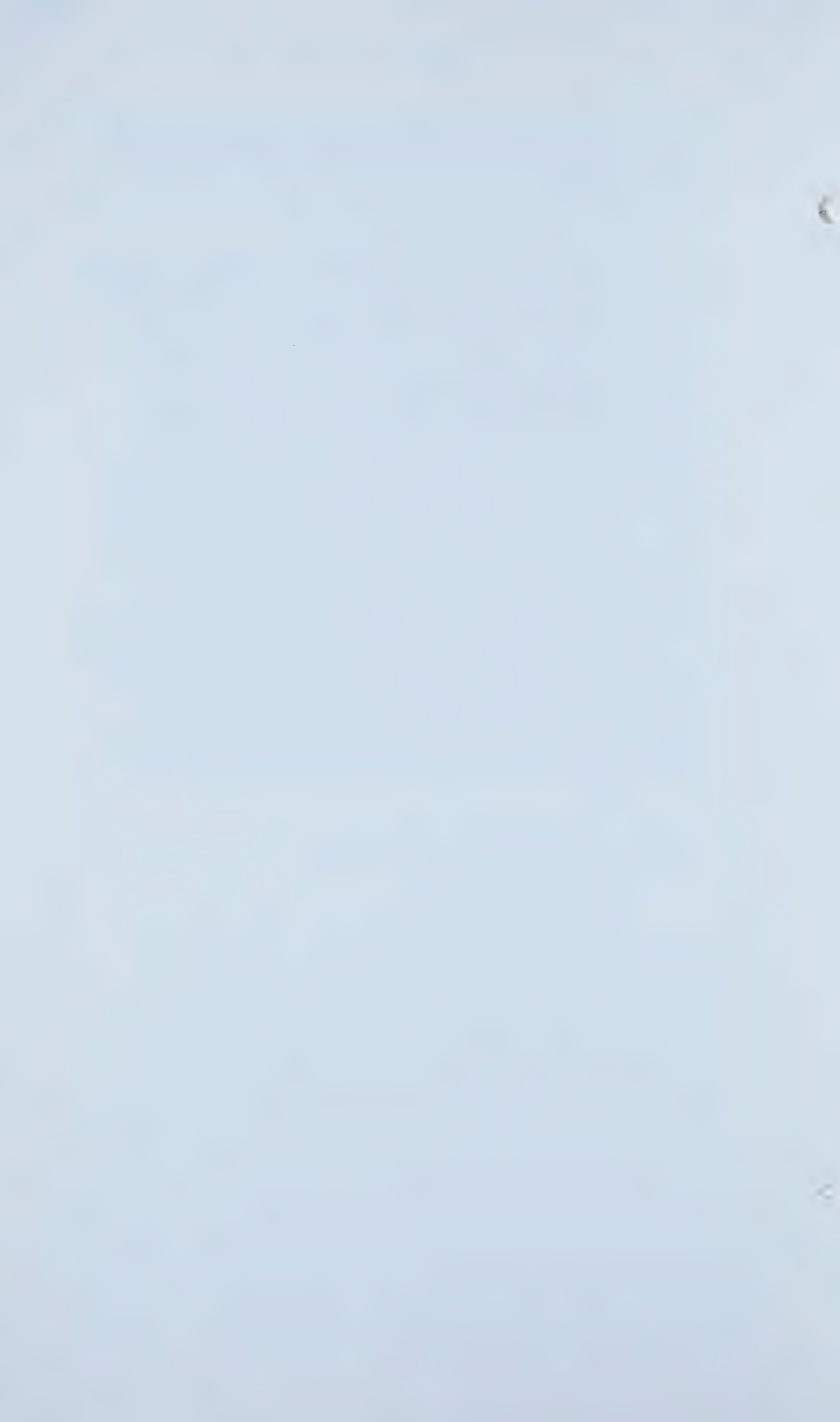
- 64 -

"cial analysis, it is consistent to consider the convertible preferred stock as a portion of the common stock equity."

In support of this conclusion he said:

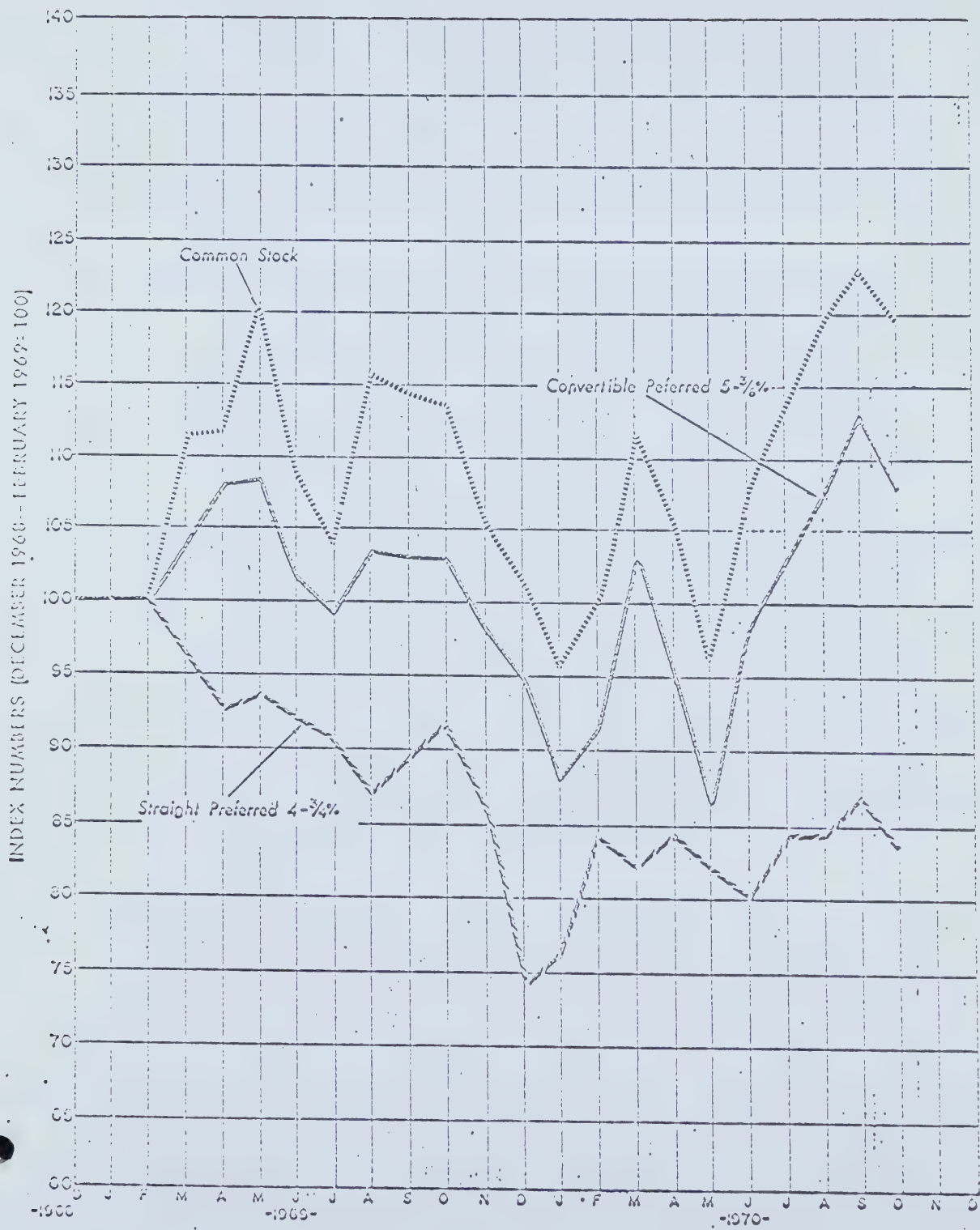
"..... If you will turn to Chart B, which is shown at page 12 of Exhibit 53, I set out an empirical confirmation that the convertible preferred shareholder considers his investment as a common stock equity. Now, this chart sets out a comparison by reference to index numbers of the price of the Trunk Line convertible preferred stock of 5-3/8% to the price of the common stock and the price of the straight preferred that is non-convertible of Trunk Line at 4-3/4% dividend rights; all of those, as I say, are expressed on an index number basis. The chart shows that the price of the convertible preferred commencing February 1969, has traced the price of the Trunk Line common stock in each and every month through November of 1970. In contrast you will observe that the price of the convertible preferred stock has behaved quite differently than the price of the Trunk Line non-convertible preferred stock; more specifically in 50% of the months since February of 1969 the price of the convertible preferred has moved in a direction opposite to the direction of the non-convertible preferred. I, therefore, consider this empirical proof that the preferred considers his investment as a common stock equity and not as a preferred stock investment."

Chart B is reproduced on page 65.



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CHART B



Discussing the market behavior of the convertible debentures he said:

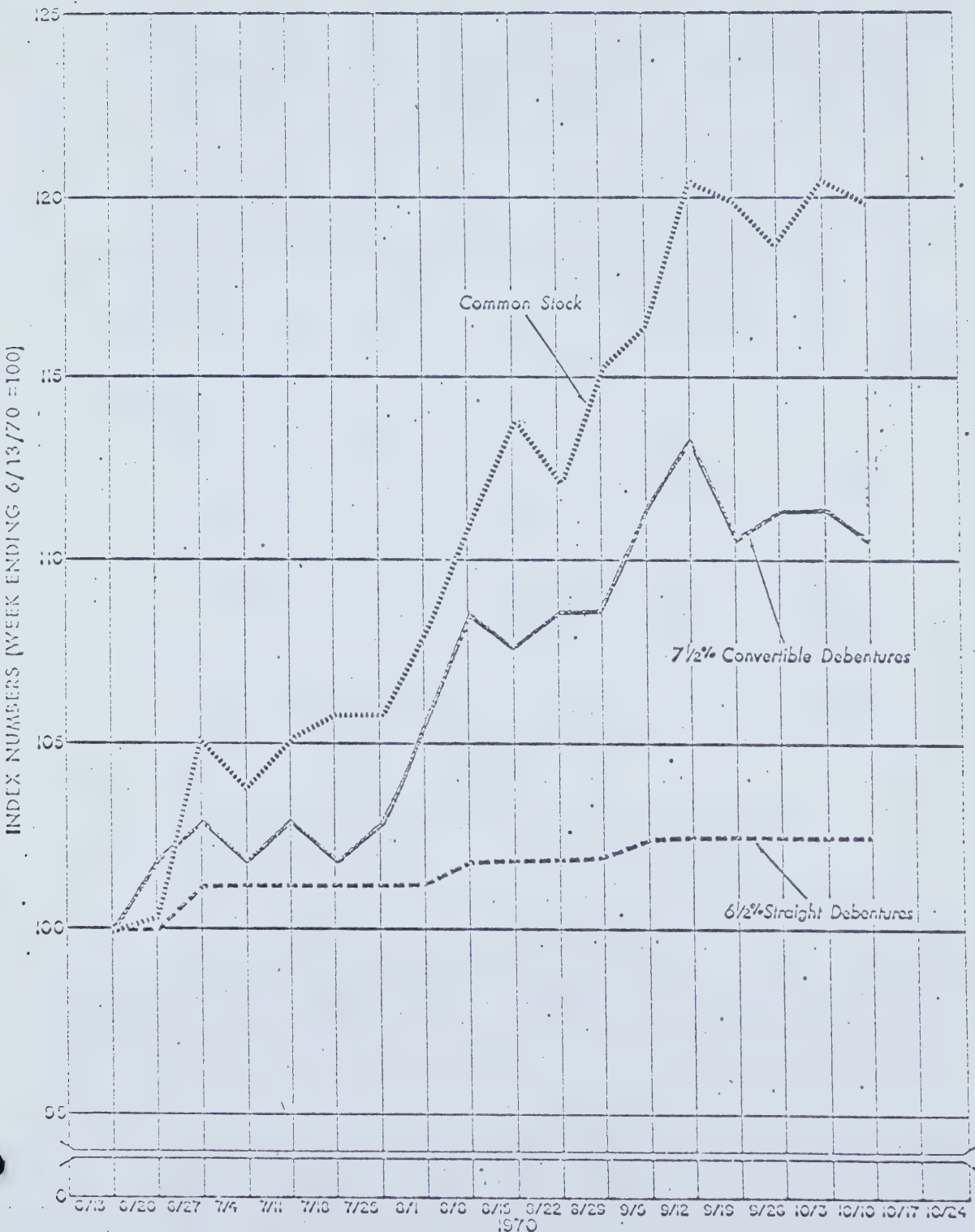
" It will be recalled in the capital structure, shown at Schedule 9, that Trunk Line issued convertible debentures in 1970; in fact, these debentures which had a coupon rate of $7\frac{1}{2}\%$ were issued February 3 of 1970. Each \$1000.00 in the debenture had a conversion privilege into 25 shares of Class A common stock until July 15, 1982. However, conversion just commenced to take place in December, of these debentures, in December 1970.

Q What has been the price behavior of the convertible debentures.

A I set this out on Chart C, which is shown at page 13 of Exhibit 53. Since the debenture has only been outstanding since February of 1970 I utilized a shorter period for comparing the market price of that convertible debenture with the price behaviour of a Trunk Line straight non-convertible debenture, namely, the $6\frac{1}{2}\%$'s and with the price of the common stock of Alberta Gas Trunk Line. Now you will observe that, once again, I utilized the index number technique to compare price changes with the price of the three securities as of June the 13th of 1970 shown as 100 and then the price changes thereafter shown as an index using that period for the base of the index numbers. I won't dwell on a comparison of the three lines shown here on Chart C but merely observe, as may clearly be seen, that the price behavior of the $7\frac{1}{2}\%$ convertible debenture has followed closely the price of the common stock of Trunk Line and has not all behaved in a manner consistent with a non-convertible debenture as represented by the $6\frac{1}{2}\%$ straight debenture."

Chart C is reproduced on page 67.

CHART C



NOTE: Price data stops 10/10/70 since data not published for 6 1/2% straight debentures.
SOURCE: The Financial Post

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Referring to the charts he said:

" So, in my view, Charts B and C of my exhibit, demonstrate that the investor views both the convertible preferred and the convertible debenture as equity opportunities, not fixed income instruments and a compelling reason for reaching this conclusion, in addition to the price behaviour shown on Charts B and C, is the fact that if the holders had desired to place their investment in fixed income securities they could have purchased substantially higher yielding debentures or preferred stock at the time Trunk Line sold the convertible securities and this opportunity exists up to this time."

In Schedule 9 of Exhibit 53 he illustrates the effect of treating the convertible preferred shares as equity capital and treating both the convertible preferred shares and convertible long-term debt as equity. The capitalization ratios shown by the schedule on the capitalization at June 30, 1970 are as follows:

	A	B	C
Debt	71.6%	71.6%	61.1%
Preferred	13.0	7.4	7.4
Equity	<u>15.4</u>	<u>21.0</u>	<u>31.5</u>
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

A - No adjustment

B - Treating convertible preferred shares as equity

C - Treating convertible preferred shares and convertible debentures as equity.

In discussing the trends in capitalization of other utility companies he selected three Canadian groups and two American groups showing the comparable capitalization at 1964 and 1969. At p. 848 he said:

"

The capital structure for all of these groups have been reasonably stable, as between the two test years. For the Canadian gas distributors, the capital structure in 1969 averaged 50.9% in non-convertible long-term debt, 2.8% in convertible long-term debt, 12.8% in non-convertible preferred capital, 1.8% in convertible preferred capital and 31.7% in common stock equity capital.



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"..... Now, as of the same date, you will observe that for Canadian gas pipelines the capital structure averaged 57% in non-convertible debt, 9.5 in convertible long-term debt, 2.6% in non-convertible preferred stock, 2.8% in convertible preferred stock and 28.1% in common stock equity. As of the same date the oil pipelines in Canada had a capital structure averaging 56.7% in non-convertible long-term debt and 43.2% in common stock equity capital. The average capital structure in 1969 for a group of U.S. gas distributors averaged 54.7% in non-convertible debt, 6.6% in non-convertible preferred stock, 1.4% in convertible preferred stock and 37.3% in common stock equity. Finally, for a group of gas pipelines operating in the States, the capital structures as of 1969 averaged 55.9% in non-convertible long-term debt, 3.9% in non-convertible preferred stock, 1.3% in convertible preferred stock and 38.9% in common stock equity capital."

and at p. 850:

"The reason for utilizing a group of gas pipelines and gas distributors operating in Canada is perhaps obvious, however, it may be recalled that Trunk Line only transports gas; it does not buy gas and it does not sell gas as a commodity. In this regard Trunk Line's operating characteristics are similar to crude oil pipelines who operate as a contract or common carrier, therefore, the financial experience of crude oil pipelines seems to be relevant to our inquiry. The reason for selecting U.S. gas companies is primarily because some Canadian gas companies acquire a portion of their capital in the United States and thereby compete for funds with U.S. gas companies."

In comparing the capitalization ratios with that of Trunk Line he said:

"..... By any test it is clear that the common stock equity ratio for Trunk Line has been and remains substantially lower than any of the reference groups. Over the period 1961 to 1967 the Trunk Line common stock equity ratio averaged 15.2% which is approximately one-third to one-half the common stock equity ratio of the five reference groups shown on Schedule 10. An equity ratio of 15 to 16% incurs a very substantial financial risk over and above the business risk. This adverse financial risk affects the viability of a firm and the financial integrity of its common stock investment and it causes the cost of capital to be higher than it would have been at a more typical equity ratio."



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Schedule 10 of Exhibit 53 reflects the 1969 capitalization ratios of the groups chosen as follows:

		<u>Canadian</u>		<u>American</u>	
	<u>Gas Distributors</u>	<u>Gas P.L.</u>	<u>Oil P.L.</u>	<u>Gas Distributors</u>	<u>Gas P.L.</u>
Debt	53.7%	66.5%	56.7%	54.7%	55.9%
Preferred	14.6	5.4	--	8.0	5.2
Equity	<u>31.7</u>	<u>28.1</u>	<u>43.3</u>	<u>37.3</u>	<u>38.9</u>
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

Without considering any convertible issues as equity

On page 1 of Schedule 16, Exhibit 53, Mr. Schantz demonstrates the basis of his estimate of the embedded cost of debt capital to Trunk Line at December 31, 1970. This consists of two components:

Embedded cost of non-convertible long-term debt	7.4%
Embedded cost of 7½% Series 1 convertible debentures	10.39%

In discussing the embedded cost of the convertible debentures he said at p. 863:

- "Q Will you now go on to explain the embedded cost of Trunk Line's convertible debentures as of December 31, 1970?
- A Yes, this is shown in the last column of sheet 1 of Schedule 16 as a separate column from those debt issues that are non-convertible. The convertible debentures were sold by Trunk Line at a coupon rate of 7½% in February 1970. As I have previously testified in regard to Trunk Line's capital structure, these debentures were purchased, in my judgment, by investors as an equity investment not as a debt investment, because once the debenture is converted there remains no debt liability; the whole amount is converted into common stock equity.

Now that the investor was purchasing this convertible debenture as an equity interest in addition to the reasons I have previously given should also be apparent by the fact that while the yield to purchaser at offering was 7½% on this convertible series in February 1970, the McLeod-Young average yield on traded bonds was about 9.4%."

and at p. 864:

"Q And have you made inquiries as to what it would have cost if it had been sold as a straight non-convertible debenture in February of 1970?

A Yes, I did. I addressed my inquiries to Dominion Securities. Dominion Securities estimates that Trunk Line would have had to pay the purchaser a yield of about 10 per cent on a straight 20-year basis. This, then is equivalent to a price of \$78.55 at a coupon rate of $7\frac{1}{2}$ per cent. The difference in the price, \$21.45 per unit, equalling \$100.00 less \$78.55, may be attributed to the price the purchaser was willing to pay for the privilege of purchasing the prospective conversion of the debenture into the common stock equity. Thus, I show in the last column on Schedule 16 at sheet 1 that after allowing for expenses of issuance the embedded cost to Trunk Line for the debt portion of the convertible debentures was 10.39 per cent."

He then says:

" I would suggest to the Board that at this time the convertible debenture be considered as a separate part of the debt capital, and to continue to consider it in this manner until it becomes more apparent as to whether the investor is going to continue converting the debentures into common stock shares."

In his Schedule 19 of Exhibit 53 he sets out his estimate of embedded cost of preferred shares of which \$27.5 million Series C non-convertible issued in 1965 has an embedded cost of 4.88% and \$20.0 million Series D convertible issued in 1968 sold to yield the purchaser $5\frac{3}{8}$ %, on which Mr. Schantz estimates the cost to be 7.65%. His reasons for this difference are set out at p. 867 of the transcript where he says:

" I would like to give a bit more detail on the Series D issue. It was sold in October of 1968 at a yield to the purchaser of $5\frac{3}{8}$ per cent, and in contrast the yield on traded preferred stocks of the sort shown on Schedule 17 on my exhibit, as of that month averaged 6.12 per cent or some 75 basis points higher than the yields at offering on the Trunk Line convertible preferred. Now, in contrast, the yield to the purchaser on the new issue of non-convertible preferred stock shown in the first column for Series C was only about 8 basis points above the average yield on traded preferred stock at that time. That 8 basis points accounts for market pressure and taxation factors. Thus, it is clear that with respect to the convertible preferred stocks that the



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" investor was purchasing more than just a preferred stock dividend and principal, in fact he was purchasing the right to convert to common stock, as I have previously indicated conversions are taking place.

Q And did you obtain an estimate of what rate Trunk Line would have had to pay on an issue of straight preferred stock in October of 1968?

A Yes, I addressed this inquiry also to Dominion Securities. Dominion Securities estimates that if Trunk Line had issued a non-convertible preferred stock in October of 1968, a yield rate of about 7.50 per cent would have been required. After allowing for expenses at offering, this would indicate an embedded cost of 7.65 per cent. Now, this yield represents a price of \$71.67 per unit pf preferred, with the difference of between \$100.00 and \$71.67, namely \$28.33 representing the cost of the privilege to convert the preferred stock into the common stock equity."

He recommends:

"As I have previously testified with respect to the capital structure, it would be my recommdnation that the Board consider the convertible preferred stock as a part of the common stock equity. With respect to the non-convertible Series C the embedded cost, of course, should be 4.88 per cent."

His estimate of the fair rate of return on common shares of Trunk Line is based on evidence relating to:

- (a) the cost of capital measured by reference to indicated investor capitalization rates of common shares, and
- (b) comparable earnings measured by reference to the earnings on book equity.

He sets out the behaviour of Trunk Line's common shares in the market in Schedule 20 of Exhibit 53 of which a partial summary shows:

	<u>Average Market Price</u>	<u>Dividend Payout Ratio</u>	<u>Earnings Price Ratio</u>	<u>Dividend Yield</u>
1959	\$25.81	--	1.63%	--
1962	31.00	76.3%	4.23	3.23%
1965	37.50	67.3	4.56	3.07
1969	41.00	62.8	5.83	3.66

He supplemented this information by saying in the early years of Trunk Line's life the earnings per share in 1958 were 15¢ per share increasing in 1959 to 42¢ per share, Trunk Line having commenced transporting gas from its plains division facilities in 1957.

While he prepared a schedule of earnings-price ratios applicable to the Canadian and American utilities which he used in his study his conclusion was that no weight can be given to these ratios in reaching a conclusion as to the fair rate of return on the common equity capital of Trunk Line.

He gives as his reasons for coming to this conclusion:

"Earnings-price ratios would be useable evidence only if two conditions are met; (1) the reported earnings used to construct the earnings-price ratios approximately measure the prospective income which investors hope for or expect into perpetuity; and (a) the market price of the stock represents investors' evaluation of the present worth of that prospective income.

In other words, the earnings-price ratio provides a measure of the capitalization rate only when stockholders expect that future earnings will be the same as current earnings. Now, such a no-growth situation has not existed in the market for many years and this is particularly true with regard to the natural gas industry in Canada.

The earnings-price ratio method, therefore, is neither theoretically valid or useful for determining reasonable utility earnings because it ignores investors' expectations of growth in per-share earnings in a dynamic growth economy or in inflation or both.

Now, the validity of this claim, I would suggest is demonstrated by the fact that, for a decade or more, earnings-price ratios have been at or below the yields on utility bonds and dividend yields have been well below such bond yields. Referring to Schedule 21, for example, and Schedule 22 it is of interest to note that utility bond yields have exceeded earnings-price ratios of Trunk Line and the Canadian gas pipeline group throughout the entire period from 1959 to 1969 and the earnings-price ratios for the Canadian pipelines and Canadian gas distributors were less than bond yields throughout most of the period and by reference to Schedule 22 dividend yields for all of the companies were less than bond yields in all of the years. So, it should be obvious that investors have not been buying common stock in expectation of lower returns than they would have realized with relatively risk-free

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"investments in bonds of the same or similar companies.

Now, earnings-price ratios, in my judgment, have become useless as a measure of investors' capitalization rates under the market conditions prevailing for more than ten years. Again I want to stress that this has been particularly true with regard to the natural gas industry in Canada. A common stockholder buys with his stock both the right to receive dividends currently being paid and the right to receive all other values which may be ultimately realized through possession of the stock. Therefore, stocks of a healthy and growing company are purchased to realize benefits from the growth in earnings and growth in dividends and the expectations that the future market price will reflect this growth. During recent years common stock prices have been far in excess of investors' valuation of current earnings. The prices have reflected investors' estimates of future earning and future dividends, explaining why earnings-price ratios for the rapidly growing Canadian gas companies, gas distributor companies, as well as Trunk Line, have been only about two-thirds of the yield on utility bonds, especially in recent years, while the earnings-price ratios for the gas pipeline group were less than half the level of bond yields. This also explains why Trunk Line and other utilities has been able to sell convertible debt and convertible preferred securities at cost rates substantially less than prevailing bond yields. Therefore, an estimate of the current cost of capital of common stock necessarily has as its foundation an estimate of what investors have assumed to be the rate of growth in earnings and dividends per share into the future."

The trends in growth on earnings of common shares is illustrated by Mr. Schantz in Schedule 23 of Exhibit 53. Using 1969 earnings as a base index number of 100 the comparative index of earnings in the prior years back to 1959 are shown on this schedule for the groups of utility companies which he selected for comparable purposes.

He points out that earnings in 1969 are somewhat lower than they had been for 1968. Of the eleven-year period 1959-1969, which Mr. Schantz used, the indices of the following years is as follows:



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	<u>Canadian</u>			<u>American</u>		<u>Alberta</u>
	<u>Gas</u>	<u>Gas P.L.</u>	<u>Oil P.L.</u>	<u>Gas P.L.</u>	<u>Gas</u>	<u>Trunk</u>
	<u>Distributors</u>				<u>Distributors</u>	<u>Line</u>
1961	46.9	38.4	60.1	52.5	51.2	53.6
1965	75.3	98.8	82.4	79.6	75.0	71.5
1967	93.2	131.3	102.6	97.3	86.2	78.7
1968	101.6	115.4	93.6	101.2	94.7	81.6
1969	100.0	100.0	100.0	100.0	100.0	100.0

He also prepared a table, similar in design, to show trends in dividends per share for the years 1959-1969. The indices for dividends for the same years as indicated above are:

	<u>Canadian</u>			<u>American</u>		<u>Alberta</u>
	<u>Gas</u>	<u>Gas P.L.</u>	<u>Oil P.L.</u>	<u>Gas P.L.</u>	<u>Gas</u>	<u>Trunk</u>
	<u>Distributors</u>				<u>Distributors</u>	<u>Line</u>
1961	41.6	--	76.6	63.4	53.6	--
1965	63.9	90.0	93.4	83.5	73.0	76.7
1967	78.2	100.0	106.8	92.8	85.1	82.0
1968	89.3	100.0	100.0	98.3	93.6	94.0
1969	100.0	100.0	100.0	100.0	100.0	100.0

In commenting on estimating the cost of capital by reference to the stock market, he said at p. 879:

"There has been an increasing awareness that investors, in purchasing common stocks of utilities, have been buying future dividends based on expected continued growth in earnings and dividends, and that these growths in earnings and dividends will cause the future price of the stock to be higher than what it would have been otherwise. An analysis of growth rates in earnings and dividends therefore provides a basis for assessing investor intentions in the purchase of these common stocks. Since investors in both Canada and the States have been purchasing stocks, common stocks, with the anticipation that earnings and dividends will continue to grow in the long run, one indicator of prospective future growth in earnings and dividends is the historical growth rate. Now, in making this analysis, the investor necessarily assumes that the utility will continue to pay out increased earnings in the form of higher cash dividends, at a reasonable dividend payout ratio. He also necessarily assumes that the economy will continue to experience prosperity in the long run and will not experience deep recessions, or major wars. And, quite naturally, the investor also assumes fair regulatory treatment over the long run."

He concludes from this that:

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"..... Since current dividends or earnings cannot be accepted as the measure of dividends or earnings anticipated by investors in common stocks, it is necessary to estimate the growth which investors believe to be in prospect. Having made this estimate, it is then possible to determine the rate of discount which equates the future flows of moneys anticipated by the investor for the market price of the stock which they pay in order to be entitled to these future moneys. Now, this rate of discount is sometimes called the discounted cash flow, or DCF rate. It is also called the capitalization rate.

The capitalization rate can be manually determined by taking the current cash dividend per share and increasing this dividend in accordance with the anticipated growth in earnings and dividends in the future. Now, by trial and error, a capitalization rate can be determined which discounts these future income flows back to the current value of the stock. It can be also demonstrated mathematically that this capitalization rate is the sum of the current dividend yield plus the anticipated annual average growth in earnings or dividends."

Since past or present dividends cannot be taken as the measure of benefits expected by investors in a growth company, it is necessary to make an estimate of the growth which investors believe to be in prospect. In my judgment, the estimation should be made by reference to growth in earnings in order to eliminate short run variations in dividend payout ratios. Other analysts, however, have argued that growth in dividends are also relevant in spite of variations in the dividend payout ratio. Furthermore, this method of investment analysis is limited to common stocks that may be considered income or investment grade stocks where speculative elements do not swamp out the income consideration. Thus, this method of estimating investor expectations introduces an area of uncertainty, or contention; but it is the only way to estimate the current cost of common stock capital of investment grade stocks by reference to stock market prices. Because of the area of uncertainty I would not recommend that sole reliance be placed by the Board on the capitalization-rate method of estimating the fair rate of return on the common stock equity. In my judgment, the method should be used only in conjunction with the comparable earnings method."

Referring to the index of trends in earnings and dividends he said:

" For Trunk Line the average of these annual growth rates amounted to 12.1 per cent with respect to earnings, and 7.8 per cent with respect to dividends per share. It should be noted that the earnings per share for Trunk Line in 1969 were computed after dilution for the conversion of the entire convertible preferred stock issue

"to common shares.

For gas distributors in Canada earnings per share increased on an average of 7.2 per cent per year, and dividends per share increased by 11.8 per cent per year.

For oil pipelines the growth rate averaged 5.6 per cent for earnings, and 2.3 per cent per year for dividends per share.

For U.S. gas pipelines, earnings per share increased by 5.8 per cent per year, and dividends per share by 4.8 per cent per year.

For U.S. gas distributors earnings per share increased by 7.6 per cent per year, and dividends increased by 8.1 per cent per year."

These growth rates, he said, could be converted into capitalization rates. In describing how this can be done he said:

"..... one method for doing this would be to give a two-thirds weight to growth in earnings per share, and a one-third weight to growth in dividends per share and in accordance with the D.C.F. method add the resulting growth rate to the 1969 dividend yield, which you may recall is shown on Schedule 22. This method provides evidence with respect to investors' capitalization rate by reference to the market place. Now, on the assumption that investors expect the historical growth rates in earnings and dividends to continue, this evidence indicates that investors in Trunk Line stock are capitalizing the income at about 14.4 per cent, compared with an indicated capitalization rate of 9.8 per cent for oil pipelines; 12.9 per cent for gas distributors in Canada; 10.1 per cent for gas pipelines in the States; and 12.7 per cent for gas distributors in the States.

In continuing this analysis I would like to reiterate that gas companies in both Canada and the States have recently received or are currently applying for rate increases. The investor is, of course, aware of these rate increases or rate increase applications. This is because utilities announce rate increases to the investment community, and, furthermore, spell them out in reports to stock holders. On this basis the investor could well be discounting the decline in earnings experienced by the gas companies in 1969, and anticipating a continued increase in earnings based on the experience up to 1968. This investment appraisal would argue for computing the growth rate in earnings by use of 1968 as a terminal year, as shown for these three gas reference groups, as I do on sheet 2 of Schedule 25. These growth rates can be combined with the dividend yield in 1968 and

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"and 1969, if you wish, in order to provide a capitalization rate that, in my judgment, is more indicative of investors' appraisals of these companies. On this basis the indicated capitalization rate would be 15.1 per cent for the common stock of Canadian gas distributors, 12.0 per cent for gas pipelines in the States, and 13.2 per cent for U.S. gas distributors. This may be compared with the 14.4 per cent indicated capitalization rate for Trunk Line."

He points out that where debt and preferred shares had been converted into common shares in the groups which he was using for comparative purposes it had been necessary for him to dilute the earnings per share consistent with his treatment of Trunk Line's convertible preferred shares.

After these adjustments he concludes that investors are capitalizing income on the common shares of the various groups in the following rates:

Trunk Line	14.4%
Canadian Gas Distributors	15.1%
Canadian Oil Pipelines	10.0%
American Gas Pipelines	12.0%
American Gas Distributors	13.2%

He suggests that the 10.0% rate for Canadian oil pipelines apparently reflects a differential risk appraisal.

In determining the cost of common share capital on a capitalization basis he said:

"..... The difference between investors' capitalization rates and the cost of common stock capital is the cost which will be experienced by the enterprise, as distinguished from the investor, in order to obtain the necessary capital. These additional costs take two forms. The first is 'market pressure' or the discount from the quoted prices of bonds or stocks established in small-lot trading, necessary to move a relatively large block which must be sold to finance growth of utilities and other companies. The second difference is represented by the cost of legal and accounting work, registration fees, underwriting commissions and printing, advertising and taxes involved in an issue of securities."

I will make an allowance of 10 per cent for market pressure and the cost of financing combined. This may

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"be below the necessary level required to sell substantial blocks of equity in 1969 and 1970, but I have made no specific study of market pressure experienced in recent years.

Now, after adjusting for market pressure and financing costs, the current cost of common stock capital for Trunk Line may be estimated at about 16 per cent, after discounting for the full dilution effect of the convertible preferred stock."

He prepared Schedule 27 of Exhibit 53 to illustrate the rates of return for the comparative groups which he selected for the years 1959 to 1969. The last three years shown on this schedule depict the following rates for 1967 to 1969:

	<u>Canadian</u>			<u>American</u>	
	<u>Gas</u>	<u>Oil P.L.</u>	<u>Gas P.L.</u>	<u>Gas</u>	<u>Distributors</u>
1967	14.6%	29.8%	10.2%	18.3%	14.1%
1968	14.4	25.1	8.9	17.0	14.6
1969	13.3	25.4	7.7	15.4	14.2

Mr. Schantz concludes his testimony with a reference to a schedule, Exhibit 54, which he refers to as "Fair Rate of Return Finding for The Alberta Gas Trunk Line Company Limited Determined as of January 11, 1971 Based on the Embedded Cost of Long-Term Debt Capital and Preferred Stock and the Fair Rate of Return on the Common Stock Equity Capital".

The calculations in this schedule are reproduced below:

<u>Type of Capital</u>	<u>Capital Structure</u>	<u>Cost Rates</u>	<u>Weighted</u>
A. Based on the Capital Structure as of 12/31/70 Treating the Convertible Preferred Stock as Common Stock Equity			
Straight long-term debt	62.1%	7.47%	4.64%
Convertible debentures	10.1	10.39	1.05
Straight preferred stock	7.0	4.88	0.34
Common stock equity	20.8	14.0-15.0	3.12
Total rate of return	100.0		8.94-9.15

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<u>Type of Capital</u>	<u>Capital Structure</u>	<u>Cost Rates</u>	<u>Weighted</u>
B. Based on the Capital Structure as of 12/31/70 Not Treating Convertible Issues as Common Stock Equity.			
Straight long-term debt	62.1%	7.47%	4.64%
Convertible debentures	10.1	10.39	1.05
Straight preferred stock	7.0	4.88	0.34
Convertible preferred stock	5.0	7.65	0.38
Common stock equity	<u>15.8</u>	15.0-16.0	<u>2.53</u>
Total rate of return	100.0		8.78-8.94

He explains the schedule at p. 903 of the transcript as follows:

"..... In Part A of this exhibit, the capital structure as of December 31, of 1970, is shown to consist of 62.1% non-convertible debt; 10.1% convertible debentures; 7.0% non-convertible preferred stock; and, 20.8% in common stock equity."

In Part B of this schedule, the projected capital structure is shown to consist of 62.1% non-convertible debt; 10.1% convertible debentures; 7.0% non-convertible preferred stock capital; 5% convertible preferred stock; and, 15.8% common stock equity.

Now by applying the cost rates determined in my evidence for the three types of capital to these capital structure measures, we can construct a fair rate of return for Trunk Line. These costs rates are set out in the second column of the exhibit. Recapitulating, the embedded cost of the non-convertible debt capital is computed at 7.47% and the embedded cost of the convertible debt portion of the total convertible debt security is computed at 10.39%; the embedded cost of the non-convertible preferred stock is computed at 4.88%; and, with respect to Part B only, if the convertible preferred is to be treated separate from the common stock equity ratio, it would have an embedded cost of 7.65. The fair rate of return on the common stock equity ratio is expressed in a zone of reasonableness from 14.0% to 15%, if the convertible preferred is considered a portion of the common equity, and from 15% to 16% if the convertible preferred is to be considered not a portion of the common equity.

By weighting these cost rates by the capital structure percentages, the fair rate of return is determined to be in

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"a range of 8.94 to 9.15, utilizing the capital structure with the thicker common equity, and in a range of 8.78% to 8.94% utilizing the capital structure with a thinner equity.

It is my conclusion that a fair rate of return as of December 31, 1970 for Alberta Gas Trunk Line should be expressed in a zone of reasonableness with a rate of return of 8.78% representing the lower zone of reasonableness and 9.15% representing the upper zone of reasonableness.

It is my further conclusion that an allowance should be made for the impact of inflation on Trunk Line's equity and this would indicate that the fair rate of return be in the range of 8.94 to 9.15%."

His conclusions with respect to the 8 3/4% return imposed by Trunk Line's directors is:

"In conclusion, a study of these data indicates that the coverage of fixed charges for Trunk Line assuming the 8-3/4 per cent rate of return prevails for the 12 month period end June 30th, 1971, would be on the low side and this directionally confirms that the rate of return should be in excess of 8.75 per cent.

A second test, which I have constructed, also directional, is provided by changes in the cost of debt capital since the rate of return for Trunk Line was determined at 7½ per cent in the year 1959. Since that year 1959 and now in 1970 I recommend a fair rate of return in the range of 8.94 per cent to 9.15 per cent, and this represents an increase of some 19 to 22 per cent over the rate of return of 7½ per cent which was fixed in the year 1959. In contrast, over this ensuing ten years, the current cost of debt capital, as indicated by yields on public utility bonds, has increased from 5.60 per cent for the year 1959 to 9.15 per cent as of June, 1970, an increase of 63 per cent."

* * * * *

The Board, earlier in this decision, pointed out that its jurisdiction to deal with the complaints is derived from section 30 of the Act. The Board's jurisdiction to regulate and control gas utility companies is contained in The Gas Utilities Act, cap. 158, R.S.A. 1970, to which Act, prior to the passing of cap. 5, S.A. 1970, Trunk Line was subject. Section 6 of cap. 5, S.A. 1970 amended section 16 of the Act (The Alberta Gas Trunk

Line Company Act) by striking out section 16 as contained in cap. 37, S.A. 1954 and substituting the following:

" 16. The Gas Utilities Act does not apply to the company or to its operations excepting with respect to gas purchased or owned by the company."

The opinion evidence on the rate of return was advanced principally by Dr. Hanson on behalf of the complainants and by Mr. Schantz on behalf of Trunk Line. Both agree on the embedded cost of debt capital at 7.47%. The main points of departure between the two have reference to:

- (a) The rate applicable to the 7½% Series 1 debentures which contain a conversion privilege allowing the holders to convert the debentures to Class "A" common stock at a conversion rate of \$40.00 per share.
- (b) The rate applicable to the 5 3/8% Series "D" preferred shares which contain a conversion privilege allowing holders to convert such preferred shares to Class "A" common stock at a conversion rate of \$35.714 per share.
- (c) The rate applicable to the Class "A" and "B" common shares.

Mr. Schantz takes the position that the convertible Series 1 debentures and the Series "D" preferred shares, which are, at the holder's option, convertible into Class "A" common shares, are costing Trunk Line a rate to service them in excess of the contractual rate of 7½% with respect to the debentures and 5 3/8% with respect to the Series "D" preferred.

The cost rate which he considers applicable to the 7½% convertible debentures is 10.39%. This rate is calculated on the basis of information which he obtained from Dominion Securities that a purchaser of straight twenty-year debentures would expect a 10% return being equivalent to a price of \$78.55 for a debenture with a 7½% coupon rate. The difference between the face value of \$100.00 of the debenture and the price of \$78.55, being \$21.45, is considered by Mr. Schantz to represent the price a purchaser was willing to pay for the conversion privilege.

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The cost rate which he considers applicable to the 5 3/8% Series "D" preferred shares is 7.65%. This rate is also calculated on the basis of information obtained from Dominion Securities that had Trunk Line issued non-convertible preferred shares in October of 1968 a yield rate of 7.50% would have been required being equivalent to a price of \$71.67 for a \$100.00 preferred share with a rate of 5 3/8%. The difference between the face value of \$100.00 of each preferred share and the price of \$71.67, being \$28.33, is considered by Mr. Schantz to represent the price a purchaser was willing to pay for the privilege of converting the preferred stock into common equity.

Reference has been made earlier in this decision to the capitalization at December 31, 1970 and rates of return recommended by Dr. Hanson and Mr. Schantz. Mr. Schantz provided two bases, one of which treated the convertible preferred shares as common equity.

A comparison of the recommendation of each of these experts, not treating the preferred shares as equity, is as follows:

	Capitalization Ratios	Cost Rates	Weighted Rate
<u>Hanson</u>			
Debt	72.3%	7.47%	5.40%
Preferred share	12.3	5.03	0.62
Equity	<u>15.4</u>	13.00	<u>2.00</u>
	<u>100.0%</u>		<u>8.02%</u>
<u>Schantz</u>			
Straight debt	62.1%	7.47%	4.64%
Convertible debt	<u>10.1</u>	10.39	<u>1.05</u>
	<u>72.2%</u>		<u>5.69%</u>
Straight preferred	7.0	4.88	0.34
Convertible preferred	<u>5.0</u>	7.65	<u>0.38</u>
	<u>12.0%</u>		<u>0.72%</u>
Equity	<u>15.8%</u>	16.0	<u>2.53%</u>
	<u>100.0%</u>		<u>8.94%</u>

Many pages of testimony have been devoted to the risks, both business and financial, to which, in the opinion of the witnesses testifying, Trunk Line is subject. The Board has carefully reviewed this testimony and excerpts therefrom have been included in this decision. The Board has also carefully considered the cost of service contracts entered into by Trunk Line with the complainants, extracts from which have also been included in this decision.

From such consideration the Board has come to the conclusion that Trunk Line faces a minimal amount of business risk. The arrangements which it has under the cost of service contracts are such that it is reimbursed, on a monthly basis, for its operating expenses, taxes and rate of return on its net investment in capital facilities devoted to serving its customers.

The degree of financial risk with which Trunk Line is faced is, however, quite another matter. As Mr. Schantz pointed out in his testimony, Trunk Line's capitalization is such that it has a high debt and preferred share ratio and an extraordinarily low equity ratio compared with other utilities. He makes the observation that one would be hard pressed to find another utility in North America with an equity ratio as low as that of Trunk Line. This indicates an unusually high degree of leverage which, while giving the equity holder a higher return when the rates of return on debt and preferred shares are low, carries with it the risk of undermining the earnings on equity if the rates of return required to be paid on debt and preferred increase, a situation which has now developed in the capital market insofar as bonds and debentures are concerned.

It follows, therefore, that it is necessary, in prudent corporate financing, to maintain a ratio of equity low enough to take advantage of the additional flow of earnings to the common equity which the leverage provides but high enough to provide a hedge if the cost rate of senior securities, which the borrower is obliged to pay, increases.

The extremely thin equity ratio which Trunk Line has, as indicated by the capitalization ratios developed by Dr. Hanson and Mr. Schantz, illustrate the vulnerability in

which the equity holders of Trunk Line are placed. That Trunk Line was experiencing difficulty in meeting the interest coverage requirements under the provisions of its trust indenture, goes back to 1964 when it became necessary to obtain an amendment to the meaning of "consolidated earned surplus" in the trust indenture changing the basis of calculating depreciation in order to meet the earnings coverage requirements of the bondholders.

As the Board pointed out earlier, the business of Trunk Line is administered by a Board of Directors elected by the holders of the Class "B" common shares, the ownership of which is restricted to gas utilities in Alberta; gas export companies holding Provincial permits for the removal of gas from Alberta, of which the complainants are members; gas producers having wells in Alberta capable of producing gas or oil; and two allotted to two directors appointed by the Lieutenant Governor in Council. There are seven directors, one elected by the gas utilities; one by the gas export companies, three by the gas producers and two appointed by the Lieutenant Governor in Council. The maximum number of Class "B" common shares which may be issued is 2,002 of which 1,771 were issued at December 31, 1969 representing 0.05% of the total common equity of Trunk Line at that time at a book value of \$25,000.

There are a number of features of the cost of service contracts which have a bearing on the financial risk of Trunk Line to which the Board considers reference should be made. In the definition of consolidated earned surplus as defined in the trust indenture reference is made to a deduction for "all taxes including income and profits taxes plus or minus charges or credits to a reserve for deferred income taxes to the extent that such deferred taxes are or have been included in the rates charged to the customers of Trunk Line".

The contracts which Trunk Line has with the complainants lists the items to be included in calculating the cost of service to be paid by the complainants to Trunk Line. One of these items refers to taxes. Generally the language used to define this item is:

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"Taxes: Accruals recorded for the billing month with respect to income and other taxes associated with Trunk Line's operations hereunder, adjustments of accruals for tax expenses included in previous bills and any taxes paid but not included in previous bills."

The evidence is, that other than a small amount, Trunk Line has been able to arrange its accounting procedures to take advantage of deductions under the Income Tax Act with the result that it has not been required to pay any income tax. To do this, however, it has been necessary to claim capital cost allowances under the Income Tax Regulations in excess of the depreciation which it has booked. This election has the effect of deferring the payment of income tax to fiscal periods in the future. Trunk Line has not billed its customers for this deferred tax. The auditors' report for 1969 estimates the amount of deferred tax accumulated to the end of that year is in the order of \$31 million.

That the magnitude of this item is giving Trunk Line some concern is evidenced by the testimony of Mr. Hopson when he said that at the time of his testimony the amount of deferred tax now aggregates \$35 million which meant, assuming a tax rate of 50%, the billings to Trunk Line's customers, if made, would have been increased \$70 million. He said this matter was under study by Trunk Line for the purpose of resolving a liability of extreme magnitude.

It has been indicated that certain of the debentures and preferred shares issued by Trunk Line contain provisions permitting conversion thereof into Class "A" common shares. At the end of 1969 the preferred shares could be converted into 535,594 common shares and a further 875,000 common shares had been reserved for the conversion of the debentures which were sold in February 1970. Reference is made to this in the notes to the financial statements contained in the auditors' report to the shareholders covering the operations of Trunk Line for the year 1969. Note 6 refers to earnings per share on the Class "A" common shares indicating that such earnings, calculated on the weighted average number of shares outstanding during the year to be \$2.47 per share. The note also contains the state-

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ment that had all the convertible preferred shares been converted on January 1, 1969 the earnings per share would have been diluted to \$1.39 per share.

The Board appreciates that research recommendations issued by the Canadian Institute of Chartered Accountants require disclosure of the effect of prospective conversions on the earnings per share by the auditors. There is, however, one additional feature to which reference may be made and that has reference to the effect on the rate of earnings per common share such conversion would have. Each preferred share, having a par value of \$100, is convertible into 2.8 shares of Class "A" common, having a share value of \$5.00 per share. This results, on conversion of a preferred share, in increasing the equity capital by \$14 and contributed surplus by \$86. This has the effect of increasing the book value of common share equity.

Calculations made by the Board's staff indicate that if 535,594 shares had been issued on conversion of the preferred shares the drop in the rate of return on book equity for the year 1969 would have been as follows:

	Earnings Per Share as Shown by the Auditors' <u>Report</u>	Common Share Book <u>Value</u>	Rate of <u>Return</u>
Weighted Average Earnings as per Audit Note 6	\$2.47	\$14.87	16.6%
Weighted Average Earnings assuming conversion of all convertible preferred shares	<u>2.39</u>	17.83	13.4%
Dilution	<u>\$0.08</u>		

What effect this may have on the market price of the common shares will only be determined in the future but if the market price continues at its present level more conversions can be expected.

There is also the question of what additional effect on the return to equity will result if the holders of the 7½% debentures issued in 1970 commence converting them into common shares.

It is against this background that the Board is faced with determining what is a fair and reasonable rate of return for Trunk Line.

The tests which have been laid down by the Courts and to which this Board has referred on numerous occasions are expressed perhaps no more aptly than in the words of Mr. Justice Lamont in The City of Edmonton and Northwestern Utilities, Limited (1929) S.C.R. 126 wherein he said:

"The duty of the Board was to fix fair and reasonable rates; rates which, under the circumstances would be fair to the customer on the one hand, and which, on the other hand, would secure to the Company a fair return for the capital invested. By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise."

The guiding principle stated here is "that the company will be allowed as large a return on the capital invested in its enterprise as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise."

This connotes the comparable earnings test. The difficulty is locating enterprises with characteristics similar to those of Trunk Line on which comparisons can be made.

* * * * *

The initial offerings of common shares of Trunk Line were made in the years 1954 to 1959 during which period 2,700,000 shares were issued at a price of \$5.00 per share. Since that time the shares issued have been on employee options, purchase warrants attached to Series "A" 6 $\frac{1}{2}$ % preferred shares and 6 $\frac{1}{2}$ % sinking fund debentures issued in 1960.

In 1968 Class "D" 5 3/8% convertible preferred shares

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were issued of which 8,717 were converted in 1969 to 24,406 common shares. A summary of these transactions which is tabulated below indicates \$31.925 million was contributed to the capital of Trunk Line by the equity shareholders.

		<u>Shares Issued</u>	<u>Par Value</u>	<u>Premium</u>
<u>Sold to the public</u>				
1954 - 1957				
	Sold at par	<u>2,700,000</u>	<u>\$13,500,000</u>	
<u>Issued on employee options</u>				
1960 - 1963				
	at \$18.50	9,600	48,000	\$129,600
1964 - 1967				
	at \$26.046	<u>1,500</u>	<u>7,500</u>	<u>31,569</u>
		<u>11,100</u>	<u>\$ 55,500</u>	<u>\$161,169</u>
<u>Issued on Warrants</u>				
1961	at \$25.00	213	1,065	4,260
1962	at \$25.00	497	2,485	9,940
1963	at \$25.00	3,273	16,365	65,460
	at \$27.00	175	875	3,850
1964	at \$25.00	2	10	40
	at \$27.00	481	2,405	10,582
1965	at \$27.00	62,319	311,595	1,371,018
1966	at \$27.04 average	20,259	101,295	446,499
1967	at \$28.81 "	336	1,680	8,000
1968	at \$30.00	66,770	333,850	1,669,000
1969	at \$30.00	<u>432,518</u>	<u>2,162,590</u>	<u>10,813,000</u>
		<u>586,843</u>	<u>\$2,934,215</u>	<u>\$14,401,649</u>
<u>Issued on conversion of Series "D" preferred</u>				
1969	at \$35.714	<u>24,406</u>	<u>\$ 122,030</u>	<u>\$ 750,000</u>
TOTAL		<u>3,322,349</u>	<u>\$16,611,745</u>	<u>\$15,312,818</u>
TOTAL capital contributed by Class "A" shareholders				<u>\$31,924,563</u>

During the thirteen-year period, 1957 to 1969, this investment in common equity has returned to the holders of

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common shares:

Accumulated net earnings less preferred dividends	\$46,605,427
Common dividends paid	<u>25,066,550</u>
	20,638,877
Less:	
Redemption costs of Class "A" and "B" preferred shares charged to earned surplus	<u>2,451,683</u>
Net earned surplus December 31, 1969	<u><u>\$18,127,194</u></u>

The relationship between the median market price and the book value of Class "A" shares of Trunk Line for the years 1958 to 1969 is as follows:

	<u>Median Market Value</u>	<u>Year End Book Value</u>	<u>Market to Book Ratio</u>
1958	\$17.38	\$ 5.35	3.2
1959	25.69	5.80	4.4
1960	22.50	6.64	3.4
1961	31.38	7.93	4.0
1962	31.00	8.61	3.6
1963	28.94	9.01	3.2
1964	22.38	9.51	3.5
1965	37.50	9.51	3.9
1966	34.06	10.23	3.3
1967	34.81	10.86	3.2
1968	33.88	11.79	2.9
1969	41.00	14.87	2.8

The rate of earnings on the median market price of the common equity (the price-earnings ratio) compared with the rate of earnings on the book value of the common equity of Trunk Line is as follows:

	<u>Current Earnings</u>	<u>Earnings Rate to Median Market Price</u>	<u>Earnings Rate to Year-end Equity</u>
1958	\$0.09	0.5%	1.7%
1959	0.34	1.3	5.9
1960	0.88	3.9	13.3
1961	1.28	4.1	16.1
1962	1.17	3.8	13.6
1963	1.36	4.7	15.1
1964	1.50	4.6	15.8
1965	1.67	4.5	17.6
1966	1.80	5.3	17.6
1967	1.88	5.4	17.3
1968	1.86	5.5	15.8
1969	2.27	5.5	15.3

Comparing the average return on year-end equity of Trunk Line with that of the Canadian gas transmission and distribution companies used by Dr. Hanson, but not including Trunk Line's earnings as Dr. Hanson did in Schedule F-7 of Exhibit 39, which is a group generally the same as that used by Mr. Schantz in Schedule 27 of Exhibit 53, the comparisons are as follows:

	<u>Trunk Line</u>	<u>3 Gas Transmission Companies</u>	<u>8 Gas Distribution Companies</u>
1965	17.6%	8.8%	13.1%
1966	17.6	9.5	12.8
1967	17.3	10.0	13.3
1968	15.8	8.7	13.7
1969	15.3	7.6	13.2

On this basis the shareholders of Trunk Line have obtained a return on their equity at a rate greater than the shareholders of the other groups have on the average.

On the other hand comparing the indices of common stock prices in Canada, as shown by the D.B.S. Canadian Statistical Review (as contained in Dr. Hanson's Exhibit 39, Schedule E-1) with the index for Trunk Line, all adjusted to a base of 100 for 1961, it is evident that Trunk Line's shares have not increased in market value to the extent the industrial and utility groups used by the Dominion Bureau of Statistics have. Trunk Line's shares have, however, fared better in the market than the financial group selected by the Dominion Bureau of Statistics.

The indices used by Dr. Hanson in his Schedule E-1 of Exhibit 39, uses a base 1956 = 100. The Board considers that if these indices are used for the purpose of comparison with the price of Trunk Line's shares in the market, a base year of 1961 provides a more reliable guide than earlier years. Trunk Line's income did not exceed the million dollar mark until 1960 and the Board considers that it would not be until the following year that the increase in earnings would be reflected in the price of Trunk Line's shares on the stock market. The net earnings for 1959 to 1962 of Trunk Line were as follows:

Dollars x 10⁶

1959	\$0.912
1960	2.831
1961	4.765
1962	5.056

The resulting indices, using 1961 as a base year, are as follows:

	<u>Trunk Line</u>	<u>20 Utility Group</u>	<u>80 Industrial Group</u>	<u>14 Financial Group</u>
1961	100.0	100.0	100.0	100.0
1962	98.8	97.9	96.5	94.4
1963	92.2	108.0	103.4	96.4
1964	104.8	122.2	125.8	98.2
1965	119.5	136.2	139.7	100.6
1966	108.5	129.3	132.8	89.8
1967	110.9	133.4	140.3	92.3
1968	108.0	131.6	143.7	104.1
1969	130.7	142.0	157.7	126.4

* * * * *

We come now to a consideration of the comparability of the gas transmission and gas utility groups used by Dr. Hanson and Mr. Schantz with the investment return and other factors which affect Trunk Line.

On the basis of information contained in the 1970 edition of The Survey of Industrials, published by the Financial Post the capitalization ratios of the companies in the gas transmission and gas utility groups compared with the capitalization of Trunk Line are as follows:

	<u>\$ x 10⁶</u> <u>Capitalization</u>			
	<u>Debt</u>	<u>Preferred</u>	<u>Equity</u>	<u>Total</u>
Trunk Line	\$176.98	\$44.55	\$49.43	\$270.96
Ratio	65.3%	16.4%	18.3%	100.0%
Trans-Canada Pipelines	\$469.5	\$100.2	\$134.4	\$704.1
Ratio	66.7%	14.2%	19.1%	100.0%
Northern and Central				
Gas	\$275.7	\$48.8	\$135.1	\$459.6
Ratio	60.0%	10.6%	29.4%	100.0%

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	Debt	\$ x 10 ⁶ Capitalization		Total
		Preferred	Equity	
Consumers Gas	\$209.5	\$17.6	\$150.5	\$377.6
Ratio	55.5%	4.7%	39.8%	100.0%
Westcoast Transmission	\$254.2	-	\$90.0	\$344.2
Ratio	73.84%		26.16%	100.0%
Union Gas	\$112.5	\$19.5	\$73.3	\$205.3
Ratio	54.8%	9.5%	35.7%	100.0%
Canadian Western	\$23.7	\$9.5	\$28.0	\$61.2
Ratio	38.7%	15.6%	45.7%	100.0%
Inland Natural Gas	\$28.6	\$8.0	\$11.8	\$48.4
Ratio	59.2%	16.5%	24.3%	100.0%
Alberta Natural Gas	\$31.2	-	\$12.0	\$43.2
Ratio	72.3%		27.7%	100.0%
Inter City Gas	\$10.9	\$3.7	\$3.6	\$18.2
Ratio	59.8%	20.5%	19.7%	100.0%

This comparison reveals, that on a comparative basis Trunk Line has, as Mr. Schantz pointed out, an extremely thin equity amounting to 18.3% of its total capitalization. The only companies which approach this level are Trans-Canada with an equity ratio of 19.1% and Inter City Gas with an equity ratio of 19.7%.

* * * * *

The Board earlier in this decision referred to the concern expressed by Trunk Line to the size of the accumulated deferred income tax for which it had made no provision in its accounts, choosing rather to pass this deferred liability on to its customers at such time in the future when its book depreciation would be greater than the capital cost allowances it would be permitted to claim under the Income Tax Regulations prevailing at that time.

It should perhaps be mentioned that it is impossible to determine when this will occur but so long as Trunk Line's capital facilities continue to expand to meet the needs of its customers so the payment of income tax will tend to be deferred.

Furthermore, it must also be recognized that at such time in the future that the capital cost allowances permitted under the Income Tax Regulations are less than the annual depreciation charges being booked, Trunk Line's net investment rate base, on which the rate of return charged under the cost of service contracts which Trunk Line has with the complainants is calculated, will have been reduced by the accumulation of the amounts of depreciation which Trunk Line has recorded in its accounts. This, to whatever extent it amounts to, will have the effect of offsetting the additional income tax charge as one of the components of cost included in the cost of service contracts.

The reports appearing in the Financial Post Survey of Industrials concerning the gas transmission and distribution group of companies selected by Dr. Hanson and Mr. Schantz reveal that some of the companies in the groups record the amount of the deferred tax liability in their accounts. Others do not. With respect to the latter companies, the survey does not indicate whether or not a footnote appended to the balance sheets of such companies by the auditors provided the amount of the accumulated deferred tax liability existing at that time.

The following has been summarized from information contained in the Survey of Industrials:

Companies Recording Accumulated Deferred Tax

Union Gas	\$27.278 million
Consumers Gas	2.438 million
Canadian Western	0.355 million

Companies Not Recording Deferred Tax

Trans-Canada Pipelines	1969 Deferred Tax \$9.0 million
Northern and Central Gas	1969 Deferred Tax \$6.2 million
Inland Natural Gas	1969 Deferred Tax \$0.756 million
Inter-City Gas	1969 Deferred Tax \$0.186 million
Westcoast Transmission	1969 No Taxable Income
Alberta Natural Gas	1969 No Income Tax Information Provided

The diversity of size and difference in methods of accounting employed by the various companies making up these groups brings into question, in the Board's view, the reliability which can be placed on such companies as a guide in determining what should be a fair and reasonable rate of return on the common equity of Trunk Line. The Board is of opinion, after carefully considering the many factors to which reference has been made, that the approach adopted by Dr. Hanson, under the circumstances, is preferable to that used by Mr. Schantz. Dr. Hanson's conclusion was a rate of return between thirteen and fourteen percent which he suggested is a rate which maintains the market to book value ratio considerably above par.

The relationship of the book value to market value for the years 1958 to 1969 was set out in a schedule on page 90 of this decision. This schedule indicates that for the year 1969 the return on year-end book equity of Trunk Line was 15.3% with a market to book ratio of 2.8 times.

The Board has reached the conclusion that Trunk Line's difficulties in meeting the interest coverage requirements of its Trust Indenture stem, not so much from the rate of return on its net investment rate base, but from the methods of corporate financing which it has adopted and the deferment of the payment of income tax to future fiscal periods without making provision in its accounts on a current basis, for the funds necessary to meet such liability. Had this been done Trunk Line's customers would have been required to provide additional funds (in the aggregate approximately \$62 million) to meet the deferred income tax of \$31 million referred to in the audit note attached to the 1969 financial statement. The funds available to meet such deferred tax liability, amounting to \$31 million, would have been available to Trunk Line for plant investment purposes, thereby diminishing its capital borrowing requirements over the years. This would have had an effect on the capitalization ratios of Trunk Line.

* * * * *

Using 1971 as a test year, and applying a mid-year basis

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of determining the rate base on the net investment rate bases set out in Exhibits 33 and 47, the return to the equity holders of Trunk Line on an 8½% rate of return basis is as follows:

	\$ x 10 ⁶	
	<u>Dec. 31, 1970</u>	<u>Dec. 31, 1971</u>
Net investment rate base	<u>\$353.750</u>	<u>\$343.605</u>
Add prior year		<u>353.750</u>
		<u>\$697.355</u>
Test Rate Base		<u>\$348.678</u>
8½% Rate of Return		\$ 28.766
Deduct:		
Debt and loan interest and expense	\$19.045	
Preferred dividends	<u>2.001</u>	<u>21.046</u>
Available for common equity		<u>\$ 7.720</u>
Book equity of common shares before adding 1971 earnings and deducting 1971 dividends		<u>\$ 57.275</u>
Return on year-end equity		<u>13.48%</u>

Counsel for Westcoast Alberta argues that there has not been in the past nor is there likely to be in the foreseeable future a substantial increased capital requirement for the Northern System of Trunk Line and, therefore, Westcoast Alberta should not be required to pay a rate of return higher than 8% on the net investment rate base of Trunk Line devoted to providing service to Westcoast Alberta.

The Board does not agree with this proposal. It must be borne in mind that in addition to the facilities specifically dedicated to providing services to each of the complainants there are other facilities used in common for all. In addition, the capital borrowed to provide these facilities as well as those specifically dedicated has been obtained at various points in

time and at varying rates of interest or return. It would, in the Board's view, be impractical if not impossible to make the segregation which Westcoast Alberta suggests.

On the basis of a careful review of the evidence and the analysis which has been made and after consideration of the arguments advanced by counsel the Board is of opinion that the rate of return of Trunk Line for the period July 1, 1970 to June 30, 1971 fixed by resolutions of the Board of Directors of Trunk Line dated June 27, 1970 at 8 3/4% should be and it is hereby reduced to a rate of 8 1/4% on the net investment rate base as determined by Trunk Line applicable to the period July 1, 1970 to June 30, 1971.

* * * * *

C O S T S

Costs will be paid by Trunk Line at amounts agreed to by the parties, such costs being chargeable as an expense, amortized over such fiscal periods as may be agreed to by the parties and charged to Trunk Line's customers in such ratio as may be agreed to by the parties. If agreement cannot be reached any party may, within ninety days of the date of issue of this decision, apply to the Board for determination of such costs and the manner of allocating the cost thereof.

DATED AT EDMONTON, in the Province of Alberta, this
Twenty-fifth day of May, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. NOBBS

CHAIRMAN

(SIGNED) W. D. ABERCROMBIE

MEMBER

(SIGNED) H. A. WILLIAMS

ACTING MEMBER

Certified a true copy.

Secretary

NO. 30249



File: Ex-Mun-45-1

IN THE MATTER OF "The Municipal
Government Act": and

IN THE MATTER OF "The Expropriation
Procedure Act": and

IN THE MATTER OF an application to the
Public Utilities Board by the County of
Lac Ste. Anne No. 28 for an order
declaring the amount of money payable
to the owner for the expropriation of a
strip of land in the North West Quarter
of Section 11, Township 55, Range 3,
West of the Fifth Meridian, in the
Province of Alberta.

BETWEEN:

THE COUNTY OF LAC STE. ANNE NO. 28

- Applicant

- and -

HELMUT RUDOLF WIMMER

- Respondent

APPEARANCES:

G. G. Ingersoll, Esq.	:	for the County of Lac Ste.
	:	Anne No. 28
	:	
W. G. Geddes, Esq.	:	for Helmut Rudolf Wimmer

D E C I S I O N

This is an application by the County of Lac Ste. Anne No. 28, the Applicant, to the Public Utilities Board pursuant to The Expropriation Procedure Act, Cap. 30, S.A. 1961, for an order fixing the compensation to be paid to Helmut Rudolf Wimmer, the Respondent, for the expropriation of a portion of the Respondent's quarter section of land.

The application involves a strip of land 150 feet in width throughout, (containing 9.17 acres), extending along the east side of the N.W. 11-55-3-W.5, which the Applicant required for the purpose of road construction, and which has been delineated on a plan filed with the Registrar for the North Alberta Land Registration District as Plan 1739 R.S.



The effective date for ascertaining the amount of compensation payable is deemed to be the 29th day of May, 1969, which, pursuant to Sections 24 (1) and 26 (4) of The Expropriation Procedure Act, was the date upon which the plan was filed in the office of the Applicant. The Respondent's land is located approximately one mile north of the Village of Gunn, Alberta.

At the commencement of the proceedings Counsel for the Respondent advised the Board that no objection was being made with respect to the Board's jurisdiction to hear and determine the application of the Respondent for loss of land and for injurious affection.

Evidence of land value, called by the Applicant, was supplied by Mr. W. B. MacGregor, who had lived in Gunn from about 1930 to 1944 and who had been carrying on business as a realtor since that time. He stated that he had a special knowledge of the area in question and placed values on the subject property as follows:

- (a) for cleared land - \$40.00 per acre; and
- (b) for swampy bush land - \$15.00 per acre.

On being asked, on cross-examination, if he was aware of the sale of the quarter section to the west of the subject property, being the N.E. 10-55-3-W.5, during the month of August, 1970, for the sum of \$7,500.00, Mr. MacGregor replied that he did not know of the sale. He stated that he was familiar with the property referred to and said that, even though the subject quarter contained more cleared acreage, he would not increase his estimate of value thereon, because the subject quarter was lower lying and contained more sloughs. After considering the evidence regarding land values, it is the Board's opinion that the Applicant's offer to pay \$90.00 per acre to the Respondent for the expropriated area is not unreasonable

- 3 -

and an award will be made accordingly.

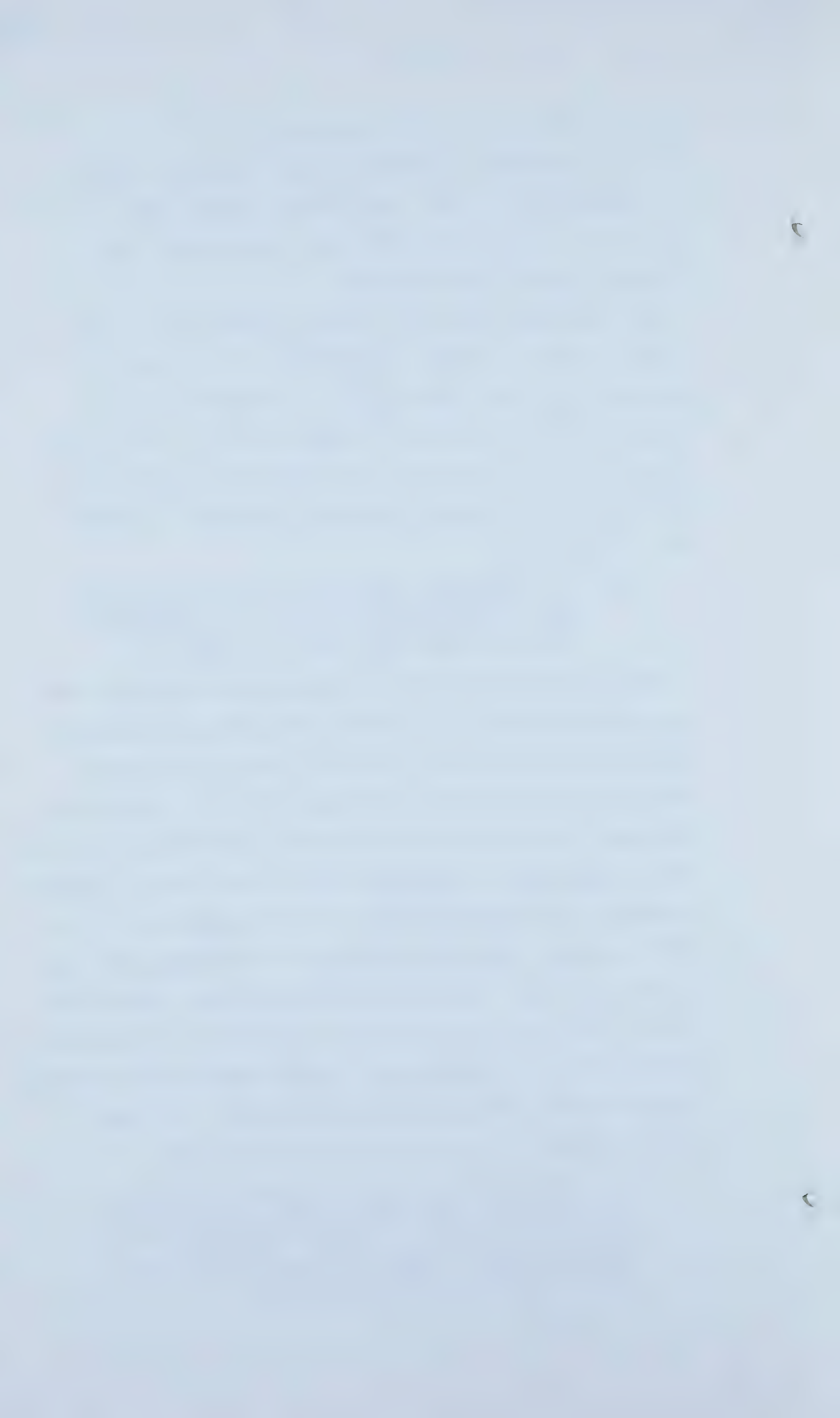
It was conceded, on behalf of the Respondent, that the fencing of the road right-of-way had now been completed to his satisfaction and, accordingly, his claim for fencing was withdrawn.

The remaining claim for damages arising out of the construction of the road involves the question as to whether or not such construction interfered with the drainage of water from the subject quarter. This claim is set forth in Counsel for the Respondent's letter of February 11, 1970, addressed to the Applicant, (Exhibit 1-7), as follows:

- "3. Assurances that drainage patters and culverts will be established in order to adequately drain the property or alternately damages in the sum of \$1,000.00 in this respect."

The Applicant's evidence in connection with this matter was supplied by Mr. F. A. Rolof, the Secretary-Treasurer for the County of Lac Ste. Anne No. 28, who tendered as an exhibit a letter, dated September 15, 1970, which the Applicant had received from the Chief Construction Engineer for the Department of Highways for the Province of Alberta. Objection was taken by Counsel for the Respondent to the entry of such letter as an exhibit at the hearing but the Board ruled that, for the sake of convenience, said letter would be and was duly entered as an exhibit, on the understanding that only such weight may be given to the contents thereof as the circumstances would permit. The last three paragraphs of such letter read as follows:

" In conclusion, it can be stated that the ditching within the right-of-way in this area has actually improved the drainage along this grade. The potholes, however, will still contain water, a condition which has not been altered due to this construction.



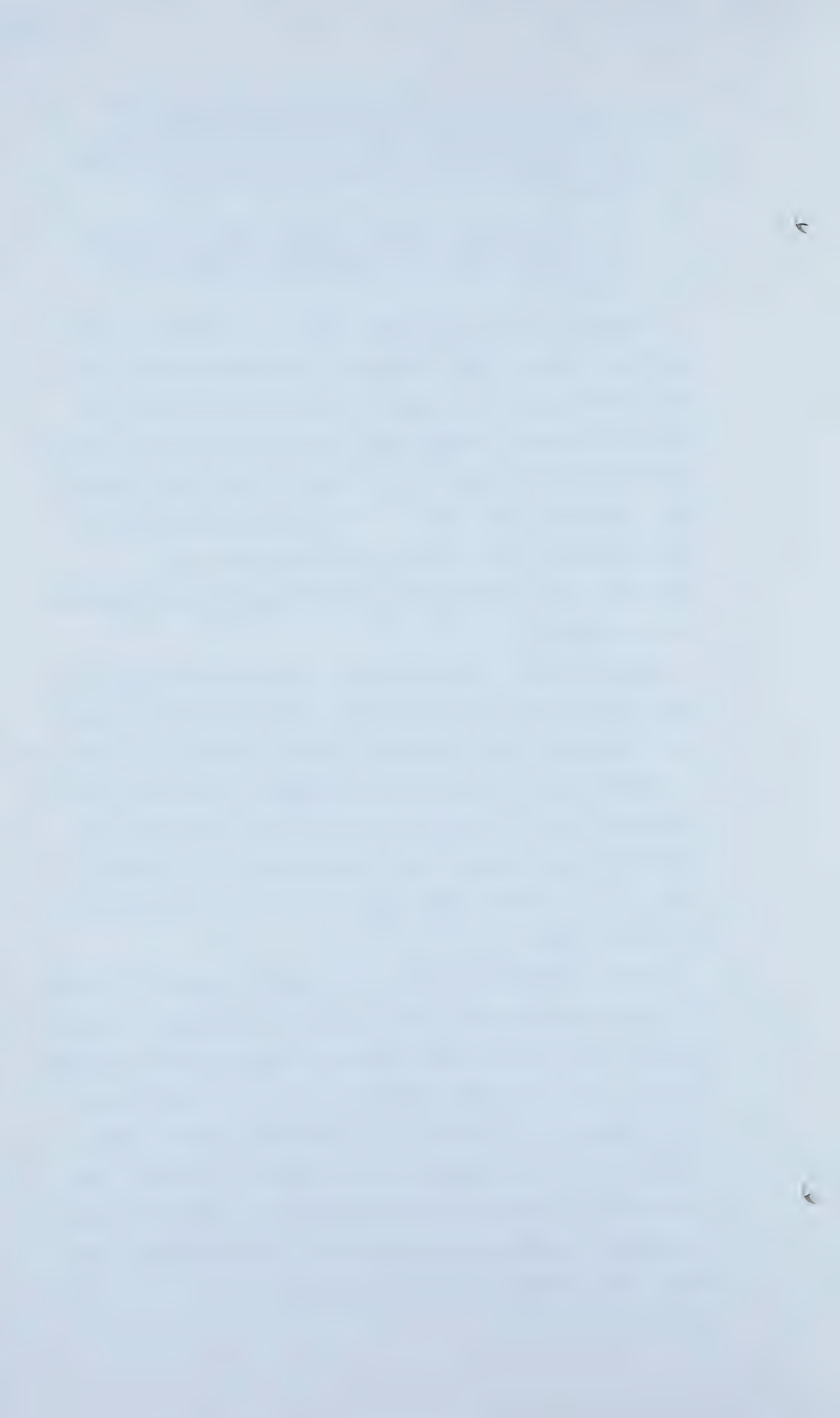
" Our aerial photographs of this land taken prior to construction show the potholes with water, a condition which has not been altered. The land adjacent the grade, is aptly described by the term swamp or more pointedly, moose pasture.

No flooding of this land has been caused by the construction of the grade in this area and the opinion of your investigating committee is correct."

On behalf of the Respondent, Mr. H. C. Engler, a duly qualified Alberta Land Surveyor, testified that he had taken readings of the level of land on and adjacent to the road from twelve different locations and had concluded that the general slope of the land, at the road, dropped from the West to the East. On cross-examination, he added that the level of the road went uphill as it proceeded in a southerly direction from the north boundary of the property.

The Respondent testified that the construction of the road had acted in the same manner as a dam and had caused the flooding of some additional twenty acres of his property. In support of his submission he tendered a series of eleven photographs which he had taken to illustrate this point. Some of the photographs were taken during the month of April, 1970, and the remainder during the month of August of the same year.

On the evidence before it, the Board is satisfied that the construction of the road may have interfered, to some extent, with the natural drainage patterns on the subject quarter, but it is not persuaded that such interference has resulted in a loss to the Respondent in the amount claimed. As no evidence was introduced to support the claim of loss amounting to \$1,000.00, the Board must use a judgment figure and will award to the Respondent for this item of damage the sum of \$200.00.



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Concurrently with this decision the Board will issue its order declaring the compensation payable to the Respondent by the Applicant, such amount being subject to the payment of interest at the rate of 7% per annum from the 29th day of May, 1969, until paid.

Costs are awarded to the Respondent at such amount as may be agreed to by the parties, failing which, as fixed by the Board.

DATED AT EDMONTON, in the Province of Alberta, this 7th day of June, A.D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) K. J. LEATHEM

MEMBER.

Certified a true copy,

Secretary.

NO. 30251



File: Ex-Mun-45-4

IN THE MATTER OF "The Municipal
Government Act"; and

IN THE MATTER OF "The Expropriation
Procedure Act"; and

IN THE MATTER OF an application to the
Public Utilities Board by the County
of Lac Ste. Anne No. 28 for an order
declaring the amount of money payable
to the owner for the expropriation of a
strip of land in the South West Quarter
of Section 23, Township 55, Range 3,
West of the Fifth Meridian, in the
Province of Alberta.

BETWEEN:

THE COUNTY OF LAC STE. ANNE NO. 28

Applicant

- and -

ALFRED WILLIAM HANSEN

Respondent

APPEARANCES:

G. G. Ingersoll, Esq.	:	For the County of Lac Ste.
	:	Anne No. 28
	:	
J.W.K. Shortreed, Esq., Q.C.	:	For Alfred William Hansen

D E C I S I O N

This is an application by the County of Lac Ste. Anne No. 28, the Applicant, to the Public Utilities Board pursuant to The Expropriation Procedure Act, Cap. 30, S.A. 1961, for an order fixing the compensation to be paid to Alfred William Hansen, the Respondent, for the expropriation of a portion of the Respondent's quarter section of land.

The application involves a strip of land 150 feet in width throughout, (containing 9.65 acres), extending generally along the east side of the S.W. 23-55-3-W.5, which the Applicant required for the purpose of road construction, and which has



been delineated on a plan filed with the Registrar for the North Alberta Land Registration District as Plan 1739 R.S. It is noted that the road right-of-way begins to curve gently to the north-west shortly after it crosses the southerly boundary of the subject quarter section.

The effective date for ascertaining the amount of compensation payable is deemed to be the 29th day of May, 1969, which, pursuant to Sections 24 (1) and 26 (4) of The Expropriation Procedure Act, was the date upon which the plan was filed in the office of the Applicant. The Respondent's land is located approximately 2 miles north of Highway No. 43, at near Gunn, Alberta.

At the commencement of the proceedings Counsel for the Respondent advised the Board that no objection was being made with respect to the Board's jurisdiction to hear and determine the application of the Respondent for loss of land and for injurious affection.

Evidence of land value, called by the Applicant, was supplied by Mr. W. B. MacGregor, who had lived in Gunn from about 1930 to 1944 and who had been carrying on business as a realtor since that time. He stated that he had a special knowledge of the area in question and placed values on the subject property as follows:

- (a) for cultivated land - \$70.00 per acre; and
- (b) for bush land - 15.00 per acre.

The Respondent gave information regarding two fairly recent land sales in the area as well as information regarding an offer to purchase the subject property and his adjoining quarter section, which he had received in 1969, for the sum of



\$18,500.00. When it is noted that the sale prices range from about \$47.00 per acre to \$70.00 per acre for land similar to the subject property, it is the Board's opinion that the Applicant's offer to pay \$100.00 per acre to the Respondent for the expropriated area is not unreasonable and an award will be made accordingly.

It was conceded on behalf of the Respondent that the fencing of the road right-of-way had been completed to his satisfaction, but it was submitted that the gates placed in such fences were too wide and, accordingly, required the services of at least two men to open and close them properly. At near the conclusion of the hearing Counsel for the Applicant advised the Board that the problem of the width of the gates was a relatively minor one and that the Applicant would adjust the width to meet the requirements of the Respondent. Relying on this representation the Board will make no award for loss claimed under this head.

During preliminary negotiations regarding the acquisition of the right-of-way the Applicant made a final offer of compensation to the Respondent in the following terms, (Exhibit 4-5):

- "1. One Hundred dollars (\$100.00) per acre for land taken for new road right-of-way.
2. Plus fencing on both sides of new road right-of-way (3 wires, posts 12 feet apart).
3. Cattle passed (Cost approximately \$5,000.00) as severance allowance "

The Respondent apparently advised that he was prepared to accept the offer of \$100.00 per acre for the land, together with the sum of \$5,000.00 as severance damage, but he did not



want a cattle underpass to be constructed. At the hearing, the Respondent stated that his main reason for not wanting an ordinary underpass to be built was because he feared that the risk of cattle loss, because of theft, would be greatly increased. He said it would be an ideal place for thieves to catch and slaughter his cattle without detection. It was his wish that a large enough underpass be built so that he may use it to drive his tractor and other farm implements through in order to work the 40 acres of cultivated grain land in the east quarter. This counter-offer was not acceptable to the Applicant, the road was constructed without a cattle underpass and, in due course, the Applicant received from the Respondent a Notice containing the following particulars of claim (Exhibit 4-8):

1. Loss of income over 30 years amortized to present value	\$1,500.00
2. Decrease in sales value	2,500.00
3. Increased operational expenses	<u>3,000.00</u>
	<u>\$7,000.00</u>

Having regard to Item No. 1, it would appear to the Board that once an award has been made or determined with respect to the amount of compensation payable for the land expropriated any additional award made in connection with loss of income, which may have been produced from the same parcel of land, would result in the payment of double compensation. No award therefore will be made for Item No. 1.

From the evidence adduced, it became quite apparent that the Respondent requires the use of the subject quarter together with the quarter section adjoining it on the east in order to maintain an economic unit for his cattle raising and



grain farming operation. Prior to the expropriation it was possible for his cattle to move freely from their main pasture in the S.E. $\frac{1}{4}$ of Section 23 to a source of water supply in the S.W. $\frac{1}{4}$ of Section 23 whenever they desired or were required to do so. It was stated that, during a normal year, the cattle could be watered from dugouts in the main pasture but that from or about July 15 to November 1 it was necessary that they obtain their water from two wells which were situated in the southerly portion of the subject quarter. The sketch which was entered as Exhibit 4-1 indicates quite clearly how this movement of cattle was obtained. The construction of the road in the location indicated in Exhibit 4-2 divided the half section into two separate parcels with the result that, after the dugouts in the main pasture had dried up, the cattle would require supervision to be taken to and from water. Exhibit 4-7 tendered by the Respondent sets forth the details of the alleged increase in operational expenses referred to in Item No. 3 of the claim. The Board does not make any finding with respect to the extra time required to move the cattle from the pasture to water and back again but, assuming that the gate in each of the fences will be rebuilt in such a manner that they may be opened and closed by one man, it does not agree that the total of extra labour involved would be as high as indicated. In this regard it cannot be disputed that the Respondent has been and will continue to be inconvenienced in his cattle and farming operation as a result of the construction of the road and, after carefully considering all of the evidence and argument of Counsel the Board finds that the compensation to which the Respondent is entitled for severance damage should be fixed at the sum of \$2,500.00.



Item No. 2 of the Notice claims for a loss of \$2,500.00 in the sale value of the half section. This claim arises out of the opinion expressed by the Respondent, unsupported in any way by sales data or otherwise, that the selling price of his half section has been decreased by from 15 to 20 per cent from the offer which he received in 1969 of \$18,500.00. While the Board is not prepared to accept this expression of opinion as being sufficient evidence upon which to base any award, it does recognize that the construction of the road will cause injurious affection to the half section involved which will result in a reduction in the value of the property on the market. Because of the lack of specific evidence in this regard the Board is obliged to use a judgment figure and will make an award in the sum of \$1,500.00 for this item.

Concurrently with this decision the Board will issue its order declaring the compensation payable to the Respondent by the Applicant, such amount being subject to the payment of interest at the rate of 7% per annum from the 29th day of May, 1969, until paid.

Costs are awarded to the Respondent at such amount as may be agreed to by the parties, failing which, as fixed by the Board.

DATED AT EDMONTON, in the Province of Alberta,
this 7th day of June, A. D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) K.J. LEATHEN

MEMBER

Certified a true copy.

Secretary





IN THE MATTER OF "The Gas Utilities Act":

AND IN THE MATTER OF "The Public Utilities Board Act":

AND IN THE MATTER OF an application by Canadian Western Natural Gas Company Limited for an increase in the rates for gas to be charged by it to its customers:

APPEARANCES:

B. V. Massie, Esq., Q.C.	:	For Canadian Western Natural Gas
G. A. C. Steer, Esq., Q.C.	:	Company Limited
	:	
S. J. Helman, Esq., Q.C.	:	For the City of Calgary
W. K. Moore, Esq., Q.C.	:	
	:	
R. A. MacKimmie, Esq., Q.C.	:	For Western Canadian Co-operative
M. A. Putnam, Esq.	:	Fertilizers Limited
	:	
J. A. Hammond, Esq.	:	For the City of Lethbridge
	:	
E. Rutschmann, Esq.	:	For the Village of Duchess
	:	
E. H. Gabert, Esq.	:	For the Village of Rosemary
	:	
F. A. Pieroway, Esq.	:	For the Village of Linden
	:	
G. Wolstenholme, Esq.	:	For the Town of Nanton
	:	
H. Wallace, Esq.	:	For the Town of Vulcan
	:	

D E C I S I O N

By its Notice of Application returnable on Friday, August 21, 1970, Canadian Western Natural Gas Company Limited (hereinafter referred to as "Canadian Western") gave notice that it would apply to the Board for an order or orders of the Board:

- "1. Fixing and approving just and reasonable increased rates, charges or schedules thereof for gas to be supplied by the Applicant to consumers.
2. Determining a rate base for the property of the Applicant that is used or required to be used in the Applicant's service to the public and fixing a fair return thereon.



- "3. Giving effect to such part of any losses incurred by the Applicant as may be due to any undue delay in the hearing and determining of the application.
4. Fixing and approving such interim rates pending the fixing of final rates as the Board may determine;

and for such further or other order as the Board may deem meet.

The grounds of the application are that the Applicant is the owner of a gas utility supplying gas to or for the public in Southern Alberta and the existing rates of the Applicant do not return revenues sufficient to provide for its present or prospective proper operating and depreciation expense or charges and a fair return on the property used in the service to the public.

On the presentation of the application the Board will be asked to direct the manner in which and the times at which evidence in support of the application may be adduced, directions as to production of briefs and documents and to fix a date for the final hearing of the application."

The application was spoken to on August 21, 1970 and the Board directed that it be set down for hearing commencing September 22, 1970 at the Court House in the City of Calgary.

As counsel for Canadian Western had stated at the preliminary hearing on August 21 copies of material in support of the application were filed with the Board and with interested parties by August 25, 1970. In the interval between August 25 and September 22 Canadian Western was asked by the City of Calgary (hereinafter referred to as "Calgary") for additional information relating to its utility operations. Canadian Western provided some of the information asked for but declined to provide all of the information.

During the course of the hearing, which commenced September 22, Calgary submitted a list of questions to which it sought answers from Canadian Western which it had submitted to Canadian Western but to which Canadian Western refused to provide answers and the Board set October 8 as the date for hearing the representations of Calgary and Canadian Western with respect to those matters on which Canadian Western was unwilling to provide information.

On October 14, 1970 the Board rendered its Decision No. 30044 with respect to the application by Calgary for additional information. The decision reads:

" This is an application by the City of Calgary (hereinafter referred to as "Calgary") to the Public Utilities Board for an order directing Canadian Western Natural Gas Company Limited (hereinafter referred to as "Canadian Western") to produce and provide to Calgary supplementary data to that provided by Canadian Western on an application made by it to the Board for an increase in the rates which it proposes to charge its customers for gas.

Canadian Western is a gas utility under the provisions of The Gas Utilities Act, cap. 37, Statutes of Alberta 1960, and as such requires the approval of the Board for any increase in rates which it proposes to charge its customers. Canadian Western has made an application to the Board for such approval and has filed with the Board and with Calgary certain data upon which it relies to support its application to increase the rates which it charges its customers, including those residing within the corporate limits of Calgary, which is the reason for Calgary's interest in the application.

Preliminary matters were spoken to on August 21 and September 22, 1970 by interested parties. During the period intervening between the two hearings Calgary requested Canadian Western to provide supplementary data to that which it had filed and Canadian Western supplied some but not all of the data requested. Calgary has now applied to the Board for an order directing Canadian Western to provide the additional information and the application was heard by the Board on October 8, 1970.

At the hearing two of the questions, having reference to the calculation of Canadian Western's 1969 income tax, were resolved by the parties. Another question, having reference to management service payments made by Canadian Western in 1969, was withdrawn by Calgary. The five remaining questions which must now be considered by the Board, being questions identified as CR. 1; CR. 43; CR. 44 and CR. 45; and CR. 51, are set out in Exhibit "F" as follows:

'CR. 1

Question:

Monthly statements of income for the year ended December 31, 1969 including all information presently shown on statements C.W. 1, C.W. 2 and C.W. 26.

" Answer:

We do not intend to supply monthly statements, since we do not feel that monthly information is either particularly useful or necessary in analysis of our material supporting our request for an increase in rates. In many industries, budgetary procedure commences from the previous year's monthly results. This procedure is not applicable to a utility such as Canadian Western Natural Gas Company.

Reason for request:

In view of the seasonal nature of the operations of the company, the City wishes to examine the revenue and expenditure of the company on a monthly basis so as to determine the monthly pattern of their operating results.

CR. 43.

Question:

Furnish balance sheets of the company as at the end of each of the months of January to November, 1969 inclusive in the same detail as that shown on the company's annual report to shareholders.

Answer:

The company does not intend to provide the requested monthly information. However, attached are interim reports to the shareholders for the period ending June 30, 1969 and June 30, 1970, marked for identification CR 43A, CR 44A, CR 45A and CR 51A.

Reason for request:

The City requires information contained on the monthly balance sheets for the purpose of reviewing the mid-year rate base and also for the purpose of reviewing working capital calculations. The company has used monthly balance sheet figures in preparing Schedule C.W. 13 in their submission.

CR. 44 and 45.

Question 44:

Furnish balance sheet of the company as at August 31, 1970 in the same detail as that shown on the company's annual report to shareholders together with statements of income for the 12 month periods ended August 31, 1969 and August 31, 1970 in the same format as shown on statement C.W. 7.

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Question 45:

Furnish statement of revenue by classification and statement of operation and maintenance expense for the 12 month periods ended August 31, 1969 and August 31, 1970 in the same format as statements C.W. 24 and C.W. 26.

Answer 44 and 45:

The company does not intend to provide the requested monthly information. However, attached are interim reports to the shareholders for the periods ending June 30, 1969 and June 30, 1970, marked for identification CR 43A, CR 44A, 45A and CR 51A.

Reason for request:

The City wishes to examine the current financial position of the company and for this reason requested a balance sheet of the company as at August 31, 1970. The reason for requesting statements of income for the 12 month periods ended August 31, 1969 and August 31, 1970 is that the City wishes to compare the most recent comparable 12 month periods and also to compare recent actual operating results with those shown on the company's forecasts.

CR. 51

Question:

Furnish a detailed breakdown of sales in MCF for each of the 12 months in 1969 in the same form as shown on statement C.W. 22.

Answer:

The company does not intend to provide the requested monthly information. However, attached are interim reports to the shareholders for the periods ending June 30, 1969 and June 30, 1970, marked for identification CR 43A, CR 44A, CR 45A and CR 51A.

Reason for request:

Because of the seasonal nature of the company's operations, the City wishes to have made available to it the sales in MCF for each of the 12 months in 1969 which information will be correlated with 1.

" Canadian Western's reasons for refusing to provide the information are also contained in a letter from counsel for Canadian Western dated October 5, 1970, a copy of which was provided to counsel for Calgary. The letter reads:

Re: Canadian Western Natural Gas
Company Limited

Following upon the discussion between the Board and Counsel with respect to the furnishing of material requested by the City of Calgary, we have discussed the matter further with officials of the Company.

The Company takes the position that it should not be called upon to furnish the information requested by the City under headings CR 1, 8, 9, 38, 43, 44, 45 and 51 set forth in the demand for information marked in the proceedings as Exhibit "F" for identification.

As the Board knows, the Company has gone to considerable trouble and expense to furnish promptly answers to the other questions but it considers that there should be some limit on the Company's responsibility to furnish information and that the material requested should be shown as being relevant to the proceedings and/or useful to the Board in its determinations. It is submitted that the requests under consideration are either irrelevant or covered sufficiently by information already supplied.

The Company's position in the items in particular is as follows:

CR 1

This demand requests monthly statements of income for the year ended December 31, 1969, including all information presently shown on Statements CW 1, CW 2 and CW 26.

Statements CW 1 and CW 2 are produced to show the historical rate of return earned by the Company over the 11-year period on actual basis (CW 1) and on a corrected to normal basis (CW 2), both on the basis of a mid-year rate base. It would not be possible to compute the rate base and rate of return from month-to-month.

As stated by the City in the reason for this request, the Company's business "is seasonal in nature"; - this is the very reason that the Company contends that monthly results are irrelevant and could be seriously misleading. The basic estimates of future years con-

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" 'tained in Exhibit 3 have been prepared on an annual basis.

The City states the purpose of the information is 'so as to determine the monthly pattern of their operating results'. It is submitted that the monthly pattern has no relevance. Supposing operating and maintenance expense is high in the summer months when revenues are low with an opposite position in other months - how does this have any bearing on the annual utility income, which is the figure used by the Board in determining allowed rates.

CR 8 and 9

This request involves a disclosure of the Company's 1969 actual income tax return. The Company declines to furnish this information on the ground that the Board has never directed the Company to make a disclosure of its actual income tax return other than to the Board on a confidential basis.

In any event the information has already been given by the Company witnesses having deposed that the income tax shown on Statement CW 1 is the income tax actually paid and that the estimated tax shown for the years 1970, 1971 and 1972 has been computed on the same basis as the historical actual returns. Witnesses have also deposed that the Company has claimed maximum capital cost allowances (as agreed upon with the City of Calgary).

As is evident from Statement CW 1 of Exhibit 3, the Company's income tax returns have been finally assessed up to and including the year 1967. It is submitted that the actual results for 1969 should not be subject to any public examination until that year has been finally assessed.

CR 38

The City requests details of the management service payment of \$100,000 made in the year 1969 as set forth in CW 3.

It will be noted that the management cost of \$100,000 shown on Statement CW 3 for the year 1969 is shown as a non-utility expense and this being so, the City of Calgary has no legitimate interest therein.

With regard to the management service cost claimed as a utility expense in the years 1971 and 1972, all known details of this were given by Mr. MacFadyen and no further details are available.



" CR 43

The City requests balance sheets of the Company as at the end of each month of the year 1969 for the stated reason that the City requires them for the purpose of reviewing the mid-year rate base.

The Company's position on furnishing this monthly information is the same as it is with respect to the monthly information required under Question CR1. The mid-year rate base is computed as the average between the beginning of the year and the end of the year, and it is not computed from any monthly figures.

If the City doubts the validity of the monthly inventory figures given on Statement CW 13 which have been verified by Company witnesses, nothing would be added by producing a monthly balance sheet merely to repeat these inventory figures.

CR 44 and CR 45

The City requests a balance sheet as at August 31, 1970, and monthly statements of income for twelve month periods ending August 31, 1965, and August 31st, 1970.

The Company repeats its objection to monthly statements as previously set forth. With regard to updating the information submitted to the Board, it is submitted there would be no end to the proceedings if information must be up-dated to the actual date of the hearing or hearings. If this request were granted, presumably the Company would be faced with a request for similar information up to January 1971 when the hearings resume. In past cases, the Board has based its decisions upon the last actual calendar year's experience with forecasts for the current and future years. The Board will note that the Company has furnished to the City of Calgary the interim report to shareholders for the period ended June 30, 1970.

CR 51

The City requests a detailed break-down of sales broken into customer classifications for each of the twelve months in 1969.

The Company contends, as with respect to the other monthly information requested, that this is not relevant or useful. The City states that it requires the information because of the seasonal nature of the Company's operations and this very reason, it is suggested, makes the information meaningless in these proceedings. It is submitted that the Board cannot be interested in a comparison of sales in July to sales in December and that it is interested only in the overall annual results.

" ' The above sets forth the Company's position on the City's request and we do not consider anything would be added by verbal argument. However, if the Board accedes to the City's request to be heard orally we understand the Board might be willing to hear the matter at the Calgary Court House when the Board has finished hearing the Alberta Gas Trunk Line Company case.'

This letter refers also to those questions which, as pointed out above, were either resolved or abandoned by Calgary.

Counsel for Calgary refers the Board to 'In re Inquiry by Natural Gas Utilities Board (No. 2)' (1946) 1 W.W.R. 250 in which Harvey, C.J.A. dismissed an appeal by Canadian Western to the Appellate Division of the Supreme Court of Alberta seeking to have set aside certain orders of the Natural Gas Utilities Board which directed Canadian Western to provide particulars concerning its operations for the years 1932 to 1944. This case had reference to an order of the Natural Gas Utilities Board directing Canadian Western to produce annual balance sheets and operating statements.

In his judgment the Learned Chief Justice said:

' Mr. Steer's only objection is that the information is not relevant.

Whether this evidence is relevant depends on whether the information can have any bearing on the determination of what is a just and reasonable price for any commodity or service with which the board is concerned.'

The principle, therefore, is that of determining whether the data requested by Calgary in the questions which it has raised is relevant in the determination by the Board of a rate base for Canadian Western as required by Section 28 (2) of The Gas Utilities Act, cap. 37, Statutes of Alberta 1960, which provides:

' 28. (1)

(2) In determining a rate base under this section, the Board shall give due consideration

(a) to the cost of the property when first devoted to public use, to prudent acquisition cost to the owner, less depreciation, amortization or depletion in respect of each, and

(b) to necessary working capital.'

The Board in fixing rates must do so on a prospective basis and for this purpose it is necessary to determine a rate base and rate of return.

In determining the necessary rate base, which includes

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"an allowance for working capital, the Board in applications seeking revision of utility rates has used, as an aid to such determination, the balance sheets and related annual operating statements as certified by utility company auditors covering past operating results and estimates for future periods as provided by the company management.

Canadian Western in the data which it has filed includes statements of annual operating results for the years 1959 to 1969 inclusive and statements showing the calculation of its rate base for each of these years. In addition, estimates have been provided setting out similar particulars for the years 1970 to 1972.

Calgary requests that it be furnished with:

- (a) Monthly balance sheets for the year 1969 for purpose of reviewing the mid-year rate base and working capital calculations. (Question CR. 43)
- (b) A balance sheet as at August 31, 1970 and statements of income for 12-month periods ending August 31, 1969 and August 31, 1970 including classification of revenue and detailed operation and maintenance expense. The balance sheet for the purpose of examining the current financial position of Canadian Western and the statements of income for the purpose of comparing the most recent 12-month period and actual operating results with those shown in Canadian Western's forecasts. (Questions CR 44 and CR. 45)
- (c) Monthly statements of income including detailed operation and maintenance expense and detailed break-down of sales for the purpose of examining the monthly pattern of operating results having regard to the seasonal nature of Canadian Western's operations. (Questions CR. 1 and CR. 51)

* * * * *

Historically Canadian Western issues its financial statements for fiscal periods ending on December 31, which statements have been reported upon by its auditors. It is also a matter of record that Canadian Western, as would be expected, also have monthly statements prepared for the purpose of providing its management with current information to assist them in keeping abreast of the company's operating results and financial condition. These monthly statements are not audited statements and are not intended for general circulation. It is a

"matter of common knowledge that audited financial statements of any company cannot be prepared and issued coincident with the date upon which the company terminates its fiscal period and some time must elapse between such date and the date upon which the company's auditors have completed their examination. Monthly statements, such as those prepared by Canadian Western, cannot, therefore, be considered to have the same degree of reliability as statements upon which the opinion of an independent auditor has been expressed.

As pointed out by counsel for Canadian Western the method used by the Board to determine the rate base of Canadian Western on a mid-year basis is by computing the average of the balances at the beginning and end of the year. This is a procedure which the Board has established in previous applications of this nature. In determining the year-end balances from which the average is obtained it is necessary to make provision for the depreciation or amortization of facilities used by Canadian Western in its utility operations. The Board has ordered that certain methods be used in providing for such depreciation or amortization which can only be done on an annual basis. An example of this is natural gas production plant, the amortization of which is calculated by the use of a formula which cannot be applied until the annual gas withdrawals from the gas reservoir are known and estimates of the reservoir balance have been determined.

Calgary says its reasons for asking for particulars showing monthly revenue and expenditures is for the purpose of determining the monthly pattern of operating results in view of the seasonal nature of Canadian Western's operations. There is no question that gas utility operations are of a seasonal nature. In the cold weather during the winter the utility is engaged in meeting the heating demands and requirements of its customers. In the summer months it must of necessity be engaged in repairing and maintaining its system to meet such winter demands and requirements. Monthly statements will no doubt indicate greater revenue received during the colder months while the warmer months will probably reveal greater amounts expended for repairing and renovating the system.

In the Board's view it appears, having regard to the different circumstances prevailing from month to month, that a more reliable basis of comparison is provided by comparing twelve-month periods in which

"all conditions prevail.

In the Board's view Canadian Western, in furnishing the particulars which it has together with such additional material as the Board has or may direct that it furnish, has provided particulars which the Board considers relevant in establishing its rate base and the rates which it may charge its customers.

The detailed monthly statements and other particulars which have been requested by Calgary under Questions CR. 1; CR. 43; CR. 44 and CR. 45; CR. 51 are, in the Board's opinion, not relevant or necessary for the purpose of establishing the fairness and reasonableness of the rate base and operations of Canadian Western which the Board must determine in this matter. Accordingly, therefore, the Board denies the application of Calgary and finds that Canadian Western is justified in refusing to provide the information which Calgary has demanded as set out in the questions hereinbefore referred to."

The hearing reconvened on January 5, 1971 and concluded on February 3, 1971, there being twelve days' sittings from the commencement of the hearings on September 22, 1970 to February 3, 1971.

On January 7, 1971 Canadian Western applied to the Board for an interim order permitting it to institute revised rate schedules to be effective on all meter readings on and after February 1, 1971. This order was granted, being Order No. 30122, dated January 11, 1971. The order provides:

" IT IS ORDERED as follows:

1. The rates as set forth and shown attached hereto as Schedule "A" be and the same are hereby fixed as interim rates.
2. The said interim rates set out in the said Schedule "A" shall become effective on all meter readings (actual or estimated) on and after the 1st day of February, 1971.
3. The rates shown on Schedule "A" are subject to review by the Board and may be reviewed, altered or changed as the Board may direct and the Applicant shall refund to its customers such amount as the Board may direct with respect to any rates which the Applicant may collect by virtue of the rates fixed by this Order which may not be approved by the Board following its decision on the application by the Applicant for changing the rates which it may charge its customers."

* * * * *



The witnesses called by the parties consisted of:

For Canadian Western

David B. Smith, Senior Vice-President of Canadian Western in charge of operations; a graduate from McGill University in 1949 with a Bachelor of Engineering degree and a Master of Science degree from the Massachusetts Institute of Technology; a member of the Association of Professional Engineers of Alberta.

Kenneth L. MacFadyen, Senior Vice-President of Canadian Western in charge of finance; a graduate from McGill University with a Bachelor of Arts degree and a member of the Alberta Institute of Chartered Accountants.

David Stanley, Vice-President and Director of Wood Gundy Securities Limited, investment dealers.

Radford L. Schantz, Vice-President of Foster Associates, Washington, D.C., Economic Consultants; a graduate of Syracuse University in Electrical Engineering and a Master's degree in Business Administration from New York University.

Beverly W. Snyder, Vice-President of Engineering and Rate Administration for Canadian Western and for Northwestern Utilities, Limited; a graduate in Engineering from the University of Alberta in 1931; a member of the Engineering Institute of Canada and a registered professional engineer in the Province of Alberta.

For Calgary

Edgar H. Bernstein, Chief Economist with Van Scoyoc & Wiskup, Inc., Public Utility Consultants, Washington, D.C.; a graduate from the University of Pittsburgh with a Bachelor of Arts degree in Economics in 1954 and a Master of Arts degree in Economics in 1955; a member of the American Economics Association, the Washington Society of Investment Analysts, the American Association for Advancement of Science, the American Committee of Political and Social Services and the Academy of Political Science.

Millwood W. Van Scoyoc, Chairman of the Board of Directors of Van Scoyoc & Wiskup, Inc., Public Utility Consultants, Washington, D.C.; a graduate of Oregon State College in 1927 with the degree of Bachelor of Science in Electrical Engineering; Attended the Oregon Institute of Technology and the Walton School of Commerce where he took courses in accounting; a member of the District of Columbia Society and the National Society of Professional Engineers, the American Accounting Association, the National Association of Accountants and the Federal Government Accountants Association.

For the City of Lethbridge

Thomas R. Little, Alderman elected to the Council of the City of Lethbridge and Chairman of the Gas Rates Committee; a member of the Institute of Chartered Accountants of Alberta.

* * * * *

Mr. Smith outlined the reasons for Canadian Western's application to the Board seeking a revision of its rates. He said from forecasts made that by 1970 the present allowed rate of return of 7 3/4% would not be earned and the situation would deteriorate further in 1971. He said there were two reasons for this, being increased operating expenses in all operations, particularly in the area of services and the increased unit cost of gas purchased, and secondly, he said Canadian Western's financial advisors had indicated that the 7 3/4% return was insufficient to maintain the financial integrity of the Company and enable it to acquire capital to meet the cost of constructing facilities to meet the needs of its customers.

He said Canadian Western was asking for an increase in revenue of \$2.503 million, which he estimated would provide a rate of return of 8 5/8% on a normal temperature basis, but on the basis of calculations made would produce a return of 8.17% in 1972.

Canadian Western's gas transmission and distribution system is outlined in a map in the Company's annual report for the year 1969, which is contained in Exhibit 3. Commencing at the Nevis gas field east of the City of Red Deer one branch of

the system extends south to the Village of Airdrie; from Calgary the system extends west to Banff with a proposed extension to Lake Louise in 1971; northeast to the Carbon gas field with a branch to the Village of Acme; southeast to the City of Lethbridge with extensions to the Village of Foremost and the Town of Cardston. There are also communities served from lines tying into the system of The Alberta Gas Trunk Line Company Limited not connected to Canadian Western's main transmission line.

In 1969, from information contained in Exhibit 3, Canadian Western served 113,019 residential, 11,977 commercial and 372 industrial and other customers, for a total of 125,368. This is an increase in the order of 62% over the number of customers which it was serving at May 1958, the number at that time being 77,372. During the same period the amount of gas sold has increased from 37.6 Mmcf. to 68.8 Mmcf., which represents an increase of 83% over 1958.

The estimated cost of the plant in service at the end of 1958, as shown in Schedule "A" of the Board's Decision No. 23616 issued in 1959, stood at \$45.0 million. The cost at the end of 1969, as shown in Exhibit 3, Statement C.W. 4 filed by Canadian Western, is shown at \$80.8 million. This represents an increase in the order of 80%.

RATE BASE

The Company tendered for the Board's consideration rate bases for each of the years 1970, 1971 and 1972 to demonstrate that on the basis of the rates in effect prior to the granting of the interim rate increase authorized by Order No. 30122 its rate of return was deteriorating, the return estimated by Canadian Western being 7.42% for 1970, 6.97% for 1971 and 6.26% for 1972.

Mr. Van Scoyoc expresses the view that in fixing just and reasonable rates, revenue, operating expenses and plant balances, the most recent available twelve months' period of actual experience should be used, adjusted for known changes. The Board has for many years, and indeed in its Decision No.



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23616 in 1959, permitted the use of estimates for the immediate future to determine both the rate base and estimated operating results, the current operating results being the base upon which future estimates are projected.

Counsel for Calgary refers the Board to applications before commissions in the United States in which a current test year, adjusted for known changes, was used rather than using future estimates for the purpose of determining the level of revenue and operating expenses that should be allowed in a rate proceeding. In the Board's view either method requires the application of judgment whether for the purpose of determining "future estimates" or "adjustments for known changes". The Board is of opinion that it is the results obtained that matters rather than the methods employed.

While past actual results are of estimable value, their value stems from providing an overview of results obtained over an extended period as a guide to future expectations.

The level of return which Canadian Western has earned compared with the 7.75% return which the Board granted in 1959 is illustrated in Schedule C.W. 2 of Exhibit 3.

The actual results, adjusted for normal temperature, are as follows:

1959	7.86%	1963	7.86%	1967	7.27%
1960	7.60	1964	8.12	1968	7.82
1961	8.00	1965	7.73	1969	7.66
1962	7.98	1966	7.40		

The Board considers, as it did in its earlier decision, that a two-year estimate period provides a reasonable period for making such estimates and this procedure will be followed by the Board in this application.

The manner of determining the rate base of a utility company is set forth under Section 28 of The Gas Utilities Act, cap. 37, S.A. 1960 (now cap. 158, R.S.A. 1970). The section reads:

- " 28. (1) In fixing just and reasonable rates, tolls or charges, or schedules thereof, to be imposed, observed and followed thereafter by an owner of a gas utility, the Board shall determine a rate base for the property of the owner that is used or required to be used in his



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"service to the public within Alberta and fix a fair return thereon.

(2) In determining a rate base under this section, the Board shall give due consideration

(a) to the cost of the property when first devoted to public use, to prudent acquisition cost to the owner, less depreciation, amortization or depletion in respect of each, and

(b) to necessary working capital.

(3) In fixing the fair return that an owner of a gas utility is entitled to earn on the rate base, the Board shall give due consideration to all such facts as in its opinion are relevant."

In applying the rate bases applicable, the mid-year original cost method is advocated both by Canadian Western and Calgary. This is the method which this Board has used for many years.

While both parties agree as to the method there is a difference of opinion with respect to items which should be deducted from the cost of the plant to arrive at the rate base. Mr. Van Scoyoc in calculating the 1969 rate base deducts the following amounts in addition to amounts deducted by Canadian Western:

Customer deposits in the order of	\$1.307 million
Reserve for injury and damages in the order of	\$0.371 million
Profit on the sale of realty in the order of	\$0.032 million

Canadian Western pays interest at a rate of 5% per annum on the customer deposits which it holds and the reserve for injury and damages is a fund provided for that purpose. The real estate profit arises from an accumulation of profits from the sale of real estate for the years 1967, 1968 and 1969 according to Mr. Van Scoyoc's testimony.

The Board rejects the additional adjustments made by Mr. Van Scoyoc. The customer deposits are lodged with Canadian Western to protect all customers by minimizing non-collection costs. Interest is paid to the customers making the deposit and such deposits represent an obligation which the



Company owes its customers. The reserve for injuries and damages is an amount reserved for the payment of claims which may arise. As such it stands available for that purpose and should not, in the Board's view, be considered as a deduction in determining Canadian Western's rate base.

The Board questions Mr. Van Scoyoc's process of accumulating real estate profits and considers that the deduction which he uses is not a proper deduction.

Canadian Western has treated gains made on the sale of real estate as a capital profit flowing to the shareholders and not to the customers whose service the property may, in some instances, have been used for. The question arises whether or not Canadian Western are entitled to adopt this procedure for regulatory purposes.

The duty of the Board is to establish a rate base on the cost of the property when first devoted to public use and to prudent acquisition cost.

In real estate there is always the possibility of an increasing sales value or conversely, in a falling market, a decreasing sales value.

It appears to the Board that gains or losses of this nature must accrue to or be borne by the shareholders of Canadian Western whose management makes the decision to sell. There is no question in the Board's mind that if, instead of a gain there was a loss on transactions of this nature, the consumers' representatives would strenuously resist any efforts to have the customers bear such loss.

Working Capital

Canadian Western's working capital allowance as determined by the Board in 1959, Decision No. 23616, is \$1.5 million. Canadian Western asked that this be increased to \$2.0 million. In support of this request Statement C.W. 13 of Exhibit 3 is submitted. This statement shows that for the years 1967 to 1969 the average inventory of material and supplies for this period was:

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1967	\$0.889 million
1968	0.847 million
1969	0.889 million

3-year average of \$0.875 million

No estimate of cash requirements to cover expenses and income tax for the year 1970 was provided by Canadian Western but for the years 1971 and 1972 Canadian Western suggests that 1/8 of the following amounts be used:

	<u>1971</u>	<u>1972</u>
Operation and maintenance expense	\$8.336 million	\$8.831 million
Expenses not enumerated	0.126	0.267
Income tax	<u>2.705</u>	<u>2.425</u>
	<u>\$11.167</u>	<u>\$11.523</u>
1/8 thereof	\$1.396	\$1.440
Average inventory	<u>0.875</u>	<u>0.875</u>
	<u>\$2.271</u>	<u>\$2.315</u>

Mr. Van Scoyoc determines a working capital allowance of \$1.011 million for 1969. This represents an average for the years 1968 and 1969, the 1968 amount being calculated at \$1.320 million and the 1969 amount \$0.702 million. His method of calculation is shown on page 21 of Exhibit 11.

Briefly the method consists of determining total net investments and deducting therefrom the capitalization of Canadian Western and adding to the resulting balance the amount obtained by adding the current assets and other deferred charges and subtracting certain current liabilities which he selects.

An examination of page 21 of Exhibit 11 reveals that the total working capital as calculated by Mr. Van Scoyoc for each of the years 1965 through 1969 is as follows:

1965	\$0.423 million
1966	0.516
1967	1.429
1968	1.320
1969	0.702



The average working capital for each of the years 1966 through 1969 is:

1966	\$0.469 million
1967	0.972
1968	1.375
1969	1.011

While adaptation of the basis has been sanctioned by some regulatory boards in other jurisdictions, to which the Board has been referred by counsel for Calgary in their argument, this basis of calculation, in the Board's view, is of no assistance in arriving at the amount of working capital allowance for rate base purposes in this case.

As the above average calculations indicate, there are wide differences in the amount of average working capital from year to year using this method. It seems obvious, that in establishing a rate base and rates to be charged in the future, the working capital allowance to be included in the rate base must be of a reasonable and stable nature. The Board considers that the amount of \$2.0 million requested by Canadian Western, is of a reasonable level. There is no question that an additional amount is required. When the allowance of \$1.5 million was authorized by the Board in 1959 the total operation and maintenance expense of Canadian Western was \$3.713 million. These expenses for 1969 have now reached \$6.815 million, representing an increase of 83.54% over 1959. The increase in working capital which Canadian Western is now requesting represents an increase of 33.33% over that previously authorized by the Board.

After considering the evidence and arguments of counsel the Board has reached the conclusion that Canadian Western's rate base for the years 1970 and 1971 should be determined at the following amounts:

1970	\$56,841,000
1971	\$59,346,000

Details of the rate base are set out in Schedule "A" to this decision.

DEPRECIATION AND AMORTIZATION

Canadian Western has been applying the depreciation and amortization methods to the various segments of its plant and property on the basis of and in conformity with the methods established by the Board in Decision No. 23616 with one minor exception.

This exception has reference to that part of the plant representing customer contributions the amount of which at the end of 1969, as set out in Canadian Western's audited balance sheet, was \$2.624 million.

Mr. MacFadyen testified that in 1968 Canadian Western ceased to provide depreciation on that part of its plant representing such contributions. This, he said, had the effect of reducing the annual depreciation charge slightly below that which would result from applying the methods authorized by the Board.

During the course of the hearing the Board informed Canadian Western that it would require additional particulars concerning the Company's depreciation experience. Specifically, the Board said at page 458 of the transcript:

"..... we think we need a little more information and this has reference to a plant and depreciation on it, I think you may recall in the decision of the Board rendered in 1959, the decision number 23616, there was some discussion regarding depreciation and methods of amortizing capital assets, and in that decision the Board made a change from what had previously been the basis to a new basis, and there has been some discussion during these proceedings on this new basis. Now, the Board, of course, has pointed out in that decision that no matter what methods of amortization will develop adjustments may be necessary from time to time, and it gets to a matter of assessing, as far as the Board is concerned, whether or not the rates which the Board found in 1959 on the basis of the evidence and the data which was provided are, have proved adequate or in adequate or perhaps more than adequate. I think in order to do that I would ask the applicant to carefully peruse the language which the Board used in its decision 23616, particularly as set out on pages 10 to pages 18, page 18, and what we would like, and some of this material may be already provided in some of the replies given to the City, but what the Board would like would be schedules for each of the

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"years December 31st, 1969 and the projections for 1970 and 1971 on those dates setting out the plants accounts balances in order, and the account numbers that have been provided for by Regulation 546/63, which as everyone knows, are the general instructions issued by the Board and are patterned after the Canadian Gas Association Uniform Accounts. Along with that we would like to have the related accumulated depreciation against those asset classifications.

..... Incidentally too, the Board observed in its decision, and I will quote it:

'The company, at the board's request,' - and I am speaking now of the 1959 decision -

'furnished a schedule of what it considered would be the estimated physical life of its various plant components and the limiting factors relative thereto. The estimated service lives, as set out in this schedule, vary from 5 to 50 years. This information was requested by the board for the purpose of testing the reasonableness of the 30-year amortization period advocated by the company and the 50-year amortization period advocated by the City.'

Now, what the Board would like at this time is an updating of this material, that is we would like a schedule setting out the company's indication of what they have found in the intervening ten years from their experience is the estimated service lives of these various components of plants under the classifications that I have referred to; so if that could be prepared both for the Board and for the use of the City and other respondents it would be useful. We also would like, of course, a reconciliation of the total depreciation charge, some of which may go, of course, to operating expenses and some of which may be capitalized, if it had gone into the plant, it may or may not be the case but we would like a reconciliation of the total charge into the reserves account against the operating or capital account which it is debited to."

In response to the Board's request Canadian Western submitted a statement of its gross fixed assets and depreciation reserve as at December 31, 1969 detailed by uniform account classification issued by the Canadian Gas Association. This statement was filed as Exhibit "I".

While Canadian Western is subject to Alberta Regulation 546/63 having reference to uniform accounts, such accounts are basically those used by Canadian gas companies. This is

manifest in the introduction contained in Alberta Regulation 546/63 which reads:

" The Public Utilities Board of the Province of Alberta, by virtue of an order made on the 29th day of November, 1963, has adopted and prescribed the uniform system of accounts contained herein for all natural gas utilities within the Province of Alberta, unless exempted by the Board.

The system prescribed is basically the uniform system prepared by the Canadian Gas Association for use by Canadian gas companies.

The general instructions set out on the following pages for the guidance of Alberta gas utilities are intended to replace the general instructions which were prepared and issued by the Canadian Gas Association as part of its uniform classification of accounts.

Inclusion of any item or account in this prescribed system of accounts does not necessarily imply the Board's acceptance of any expenditure or procedure suggested by the use of such an account.

The Board wishes to acknowledge the co-operation of the Canadian Gas Association in supplying copies of its Uniform Classification of Accounts, and to the Public Utilities Board of Manitoba and the Public Utilities Commission of British Columbia for information used in our review of the various uniform systems."

In its 1959 decision the Board referred to the growth rate of Canadian Western's plant between the review of the Company's affairs in 1949 and 1957. During that period the growth in plant had risen from \$12.677 million in 1949 to \$34.289 million, an increase of about 1.7 times.

The 1969 plant balance is now \$80.825 million, which indicates an increase of 1.36 times over 1957.

For the twenty-year period 1949 to 1969, Canadian Western's plant has increased 5.38 times.

An examination of the data submitted by Canadian Western reveals that on a composite basis the rates being charged for depreciation and amortization as a percentage of total plant are as follows:

1965	2.4%
1966	2.3%
1967	2.5%
1968	2.4%
1969	2.5%

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The charge for these items in Canadian Western's estimates indicate a rate of 2.5% for 1970 and 2.4% for 1971.

The Board considers that these rates, based on the evidence submitted, appear fair and reasonable.

Canadian Western will continue to provide for depreciation and amortization in the manner and using the methods laid down by the Board in its Decision No. 23616, dated March 4, 1959, subject to the variation which Canadian Western has adopted with respect to customer contributions.

REVENUE ESTIMATES

Canadian Western submitted a forecast of the number of customers and volumes of gas which it expected to sell for the years 1970 to 1972. Mr. Smith testified the estimates were based on management's best judgment of growth in customer numbers and sales by applying historical growth trends per customer, population growth and examination of building permits.

From Schedules C.W. 22, 23, 24 and 25 contained in Exhibit 3, the growth in the number of customers, volumes and sales (on a normal temperature basis) for the years 1959 to 1969 and the estimated period 1970 to 1972 expressed as a percentage of increase over prior periods can be constructed.

The Board has used the years 1959, 1963, 1967-1969 and the estimated years 1970-1972. The comparisons are as follows:

		<u>Percentage Increases</u>		
		<u>Customers</u>	<u>Volume Sales</u>	<u>Revenue</u>
1963	Increase over 1959 4 year period average	5.9%	5.4%	10.7%
1967	Increase over 1963 4 year period average	3.4%	6.1%	4.9%
1968	Increase over 1967	3.9%	6.5%	5.9%
1969	Increase over 1968	4.3%	3.5%	4.4%
1970	Estimated increase over 1969	5.1%	7.0%	6.8%
1971	Estimated increase over 1970	3.7%	14.2%	8.4%
1972	Estimated increase over 1971	3.6%	2.2%	3.4%

Mr. Van Scoyoc, in his schedule on page 12 of Exhibit 11, has made a comparison, on a percentage basis, of the increase in total sales of gas as well as providing a breakdown of such sales under customer classification.

The volumes of gas sold increased from 41.3 billion cubic feet in 1959 to 68.8 billion cubic feet in 1969.

Mr. Van Scoyoc, in Exhibit 11 which he prepared has provided calculations on a cents per mcf. for the years 1959 to 1972. Referring to the schedule on page 1 of this exhibit the revenue per mcf. for each of the years referred to above is as follows:

1959	33.32¢	1969	35.80¢
1963	36.69¢	1970	36.00¢
1967	35.25¢	1971	34.07¢
1968	35.24¢	1972	34.08¢

After reviewing the data with respect to revenue estimates prepared by Canadian Western and the analysis made by Mr. Van Scoyoc, the Board is of the view that Canadian Western's estimate of revenue at rates in force prior to the issue of Interim Order No. 30122 on the basis of normal average temperature for the years 1970 and 1971 appear to take into account, in a reasonable manner, the growth in customer and sales indicated by reference to past trends. The Board adopts the revenue estimates of Canadian Western as shown in Statement C.W. 25 of Exhibit 3 in the following amounts:

1970	\$25,711,000
1971	\$27,859,000

Other income estimated by Canadian Western also appears reasonable and will be accepted by the Board.

EXPENSES

The Board has carefully reviewed the expenses estimated by Canadian Western for the years 1970 and 1971 and the extensive analysis made by Mr. Van Scoyoc of the trends of expenses in prior periods as shown by the schedules and charts

contained in his Exhibit 11. The only adjustments which the Board finds necessary have reference to donations and management services.

Canadian Western estimates that donations for the year 1970 will amount to \$52,000 and for 1971 \$62,000. These donations are not allowable as an expense for the purpose of determining utility income and must, therefore, be borne by the shareholders. The Board in the 1969 Canadian Utility rate case considered that in disallowing donations as a utility expense it was also necessary to give consideration to the effect of such disallowance upon the amount of income tax applicable to utility income. The Board held in the Canadian Utilities case "that it is manifestly unfair to disallow donations as a utility expense and at the same time give to the customers the benefit of the tax saving flowing therefrom".

The Board will make the necessary adjustment in the income tax estimates proposed by Canadian Western for 1970 and 1971 resulting from the disallowance of these donations.

Canadian Western also claims as a deduction the amount of \$77,000 in each of the years 1970 and 1971 for management services. Mr. MacFadyen testified that the head office staff of the parent company (International Utilities Corporation) has been expanded so that it now provides management consulting services to its subsidiaries. He considered that such services are of benefit to both the company and its consumers.

On cross-examination he testified that in addition to consulting services the parent company assists Canadian Western in negotiating both long and short term borrowings. He considered that it was of definite assistance to Canadian Western to have the backing of the parent company when Canadian Western required sizeable lines of credit from its bankers.

Canadian Western was unable to provide any detail of the cost of the various items of service making up the total of \$77,000. Mr. MacFadyen said the charges were a matter of judgment and no billing was received by Canadian Western from the parent company on the basis of time and out of pocket expenses.

While such services are no doubt of benefit to Canadian

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Western there is no evidence, of a specific nature, which places a dollar amount on each class of service covered by the overall charge. It is clear from the evidence that part of the service rendered by the parent company has reference to financing arrangements with respect to both long and short term borrowings. It appears to the Board that charges of this nature are associated with debt costs and as such are not applicable as a deduction in determining utility expenses. The Board has come to the conclusion that without more definite evidence as to the need for and use of such services the amounts claimed are not properly allowable. However, as with donations, Canadian Western is entitled to an allowance for the additional income tax associated with the disallowance of the amounts claimed and the Board will give effect to the necessary adjustments in calculating the income tax applicable to utility operations.

* * * * *

Details of Canadian Western's estimate of income tax payable for the years 1970 and 1971 are contained in statement CR.8-CR.9 of Exhibit "C", a volume prepared by Canadian Western at the request of Calgary. The estimates contained in these statements require an adjustment for donations and management service expense disallowed as indicated above.

The revised calculation is shown below:

Dollars x 10 ³	<u>1970</u>	<u>1971</u>
Estimated income tax as per statement CR.8-CR.9 Exhibit "C"	\$1,920	\$1,495
Add:		
50% of donations	26	31
50% of management services	<u>38</u>	<u>38</u>
	<u>\$1,984</u>	<u>\$1,564</u>

With these adjustments the estimated utility income at the rates in effect prior to the issue of Interim Order No. 20122, as more particularly set forth in Schedule "B" to this

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decision, will be:

1970	\$4,117,000
1971	\$4,033,000

RATE OF RETURN

In its Decision No. 29547 with respect to the Canadian Utilities case, the Board referred to its 1959 decision with respect to Canadian Western, the judgment of the Courts and to Dr. Clemens' text "Economics and Public Utilities, saying:

" The board has a statutory duty to set just and reasonable rates for the gas supplied to consumers. The rates must provide for income and other taxes, amortization, maintenance and all operating expenses and in addition a return to investors. The rate of return is that percentage which when multiplied by the rate base provides the return which the utility must earn if it is to be able to continue that service which its patrons enjoy.

The general principles to be followed are enumerated in The City of Edmonton and Northwestern Utilities, Limited, 1929 S.C.R. 186 where Mr. Justice Lamont says at p. 192,

'The duty of the Board was to fix fair and reasonable rates; rates which, under the circumstances would be fair to the customer on the one hand, and which, on the other hand, would secure to the Company a fair return for the capital invested. By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise.'

To the above general statement this board added in its 1949 decision re Canadian Western Natural Gas Company Limited that

"the rate must be such as will enable the company to maintain its financial integrity. and attract additional capital when required. The rate, therefore, must be sufficient to

" 'enable the utility to meet interest due to its bondholders, if any, dividends to preferred shareholders, if any, and a fair return to common shareholders.'

Similar statements of principle have been expressed by the Supreme Court of the United States. In the Bluefield Water Works case (1923) PUR D 11, Mr. Justice Butler at p. 20 said:

' What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.'

and in the Hope Natural Gas case (1944) PUR 51 NS 193 where Mr. Justice Douglas said at p. 200:

'Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed, which is controlling.'

and

'The rate-making process under the act, i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests. Thus we stated in the Natural Gas Pipeline Company Case that 'regulation does not insure that the business shall produce net revenues.' 315 US at p. 590. But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there

" 'be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock.'

and

'By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.'

and at p. 201:

'The conditions under which more or less might be allowed are not important here. Nor is it important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at. For we are of the view that the end result in this case cannot be condemned under the act as unjust and unreasonable from the investor or company viewpoint.'

Dr. Clemens, in his text "Economics and Public Utilities" at p. 241 says:

'The most significant test of a fair return is the test of whether it will attract capital. What rate of return, with due regard to risk and uncertainty, will attract the investor on the market? Utilities, like competitive industries, must compete for capital. By this test they are drawn into the mechanism of the competitive economic system where they can function with a minimum of arbitrary and dictatorial control. It is not necessary or desirable that a perfect parallel with competitive industry be attained. The indispensable nature of utility service gives the public a compelling interest in creating conditions of stability so that a utility's credit is not endangered, whatever conditions in competitive and less essential industries may be. In short, the elements of both competition and stability must be blended in a workable concept of the rate of return.'

and

'Partly as a result of the administrative latitude created for commissions by the Hope Natural Gas case there has been a growing tendency to base the rate of return upon the actual past cost of debt capital and upon the present market cost of equity capital. In the writer's mind this is good policy. Since the

" 'bondholders receive a contractual return, any change in the market rate of interest would not change the cost of debt capital to the company. Interest would virtually become an operating expense. In the long run the cost of debt capital might be lowered slightly as a result of this consistent policy. The dividend requirements of preferred stock would be handled in the same manner. On the other hand, the risk-taking stockholders might well expect to receive a variable return, based upon the market return from similar securities. Earnings-price and dividends-price ratios would furnish the measure of the cost of equity capital.'

Referring again to Decision No. 23616, in considering the contractual interest paid on funded debt, the Board said at p. 31:

' In the face of this evidence it would be unfair to reduce or disallow contractual interest charges at a later date if the prospective general interest rate at that time were lower, especially when one considers that a utility may have an obligation to provide needed services when interest rates are high. Conversely it appears equally unfair to allow higher interest charges than the company contracted to pay because of prospective higher interest rates of debt capital. Consequently the board is of the opinion that the actual past cost of debt capital, properly incurred, should be considered rather than the prospective cost.'

This is not to say, however, that in this case, as the Board has stated earlier, no consideration should be given to the added investment at higher interest rates which C.U.L. is faced with in the immediate future to furnish additional facilities required to provide service to its customers. The question is how far should the Board go in considering prospective rates in circumstances such as this. The Board believes that it would be unwise to extend forecasts of the prospective cost of capital to the extent suggested by C.U.L. through the witnesses which it called. There are many vagaries in the market place and a rate of interest which may be applicable at this time or in the immediate future may well fluctuate either up or down as the economic climate varies. Furthermore, the demands for energy may increase beyond the expectations of C.U.L. which would generate revenue in excess of the estimates made no matter how reasonably and carefully they have been prepared. The Board considers, therefore, that the rate of return should be based on the actual past cost of debt capital; contractual dividends required to be paid on the preferred shares; a fair return on the equity capital and an additional allowance for the effect of the

"increased rates of interest which C.U.L. will be required to pay on its immediate prospective financing."

Evidence as to the rate of return was given by Mr. Schantz and Mr. Bernstein, Economic Consultants, and by Mr. Stanley, an Investment Dealer.

Both Mr. Bernstein and Mr. Schantz agree substantially as to the embedded cost of debt capital and to the cost of preferred shares.

Mr. Bernstein estimates the embedded cost of debt capital at December 31, 1970 to be 6.97%, details of the determination of which are shown on page 1 of the schedules contained in Exhibit 8. This rate is determined after deducting from the outstanding debt of \$30.97 million the sum of \$3.7 million which represents funds received from the issue of 1970 Series F 9 3/4% bonds invested by Canadian Western in marketable securities at the year-end.

Calgary criticizes Canadian Western for proceeding with a borrowing of \$10 million in 1970 under a Trust Indenture providing for the issue of 9 3/4% unsecured debentures. The prospectus issued with respect to this issue was dated October 30, 1970. Calgary contends that all of these funds were not required for immediate capital expenditures at the time they were borrowed and that such borrowing at a time when interest rates were at a peak places an unnecessary burden on the consumers. Reference is also made to the testimony given by Mr. Stanley on September 23rd, 1970 when he voiced the opinion that interest rates were already dropping and Calgary suggests that despite this Canadian Western proceeded with its borrowing.

The Board has pointed out on other occasions that a utility is under an obligation to provide the necessary facilities required to service its customers and cannot defer the construction of such facilities even though high interest rates prevail in the capital market at the time the funds are required.

There is no evidence to indicate why the officers of Canadian Western proceeded with the borrowing notwithstanding the testimony of Mr. Stanley but an examination of daily and financial newspapers published during the period of time in which Canadian Western issued its prospectus indicates a heavy demand for funds



in the capital market.

Some of the issues of unsecured debentures and the rates thereof, which were advertised at that time included:

1970

Oct. 29	Steel Company of Canada	\$60 million 9 3/8%
Nov. 3	Canadian Utilities	\$9 million 9 5/8% offered to yield 9.76%
Nov. 10	Trans Canada Pipelines	\$60 million 9 3/4% offered to yield 9.98%
Nov. 18	Inter Provincial Pipeline Company	\$60 million 9 3/8%

While later events may now indicate that lower interest rates have become established, in the Board's view the officers of Canadian Western do not appear to have acted in an imprudent manner in proceeding with the borrowing at the rate they were required to pay in the face of the demands for and the rates being paid for funds by other companies.

If this sum is not deducted from the total funded debt outstanding at December 31, 1970 Mr. Bernstein's calculation of the cost rate is 7.338%. This compares with Mr. Schantz' calculation of 7.33% shown on Schedule 12 prepared by him in Exhibit 5. Mr. Schantz later amended the 7.33% rate to 7.26% to give effect to a reduction in the interest rate of the 1970 bond issue from 9 3/4% to 9 1/2%.

With respect to the cost of preferred shares Mr. Bernstein's estimate is 5.06%, page 2 of Exhibit 8. Mr. Schantz' estimate is 5.07%, Schedule 16 of Exhibit 5.

The major point of disagreement between Mr. Bernstein and Mr. Schantz is with respect to the rate of return on common share equity. Mr. Schantz said he had prepared evidence pertaining to:

- (1) The cost of capital measured by reference to indicated investor capitalization rates of common stock; and

- (2) Comparable earnings measured by reference to the earnings on the book capital.

He considers that no use can be made of earnings-price ratios as a guide in determining a fair return on equity capital.

At page 166 of the transcript he gives his reasons for this conclusion, saying:

" Earnings-price ratios would be usable evidence only if two conditions are met: (1) the reported earnings used to construct the earnings-price ratios approximately measure the prospective income, which investors hope for or expect, into perpetuity and (2) the market price of the stock represents investors' evaluation of the present worth of that prospective income.

In other words, the earnings-price ratio provides a measure of the capitalization rate only when stockholders expect that future earnings into perpetuity will be the same as current earnings. Such a no-growth situation has not existed in the market for many years.

The earnings-price ratio method, therefore, is neither theoretically valid nor useful for determining reasonable public utility earnings because it ignores investors' expectations of growth in per-share earnings in a dynamic growth economy, or in inflation, or both.

The correctness of this consideration is demonstrated by the fact that, for a decade or more, earnings-price ratios have been at or below the yields on utility bonds and dividend yields have been well below such bond yields. It should be obvious that investors have not been buying common stocks in expectation of lower returns than they would have realized if they had made relatively risk-free investments in the bonds of the same or similar companies.

Earnings-price ratios have become useless as a measure of investors' capitalization rates under the market conditions that have prevailed for more than ten years. The reasons are the growth in per-share earnings over the post-war years and the emphasis placed on growth stocks in stock market analysis. A common stockholder buys with his stock both the right to receive dividends currently being paid and the right to receive all other values which may be ultimately realized through possession of the stock. Therefore, stocks are purchased to realize benefits from the growth in earnings which is expected from investment of retained earnings invested by a healthy and growing company. During recent years common stock prices have

"been far in excess of investors' valuation of current earnings. The prices have reflected investor estimates of future earnings and dividends. This is the reason why 1969 earnings-price ratios for the rapidly growing gas distributor group was only two-thirds of the yield on utility bonds. Therefore, an estimate of the current cost of capital necessarily has as its foundation an estimate of what investors have assumed to be the rate of growth in earnings per share."

He suggests that a more reliable method as a guide in determining a fair return on equity is the discounted cash flow or capitalization method. He explains its operation at page 168:

"There has been an increasing awareness that investors, in purchasing common stocks of public utilities, have been buying future dividends based on expected continued growth in earnings and dividends. An analysis of these growth rates provides one basis for assessing investor intentions in the purchase of these common stocks. Thus, investors in Canada have been purchasing stocks with the anticipation that earnings and dividends will continue to grow in the long run, and that one type of evidence of the long-run growth in earnings and dividends of utilities is the growth rates experienced over prior years. In making this analysis the investor necessarily assumes that the utility will continue to pay out increased earnings in the form of higher cash dividends, at a reasonable dividend pay-out ratio. He also necessarily assumes that the economy will continue to experience prosperity in the long run and will not experience deep recessions, nor major wars. Quite naturally the investor also assumes fair regulatory treatment over the long run.

In summary, since current dividends or earnings anticipated by investors in common stocks, it is necessary to estimate the growth which investors believe to be in prospect. Having made this estimate it is then possible to determine the rate of discount which equates the future flows of money anticipated by the investor with the market price of the stock which they pay in order to be entitled to these future monies.

This rate of discount is sometimes called the discounted cash flow, or DCF, rate. It is also called the capitalization rate. This capitalization rate can be manually determined by taking the current cash dividend per share and increasing this dividend in accordance with the anticipated growth in earnings and dividends into the future. By trial and error, a capitalization rate can be determined which discounts these future income flows back to the current value of the stock.

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" It can be also demonstrated mathematically that this capitalization rate is the sum of the current dividend yield plus the anticipated annual average growth in earnings or dividends."

In discussing dividend payouts he said:

"Since past or present dividends cannot be taken as the measure of benefits expected by investors in a growth company, it is necessary to make an estimate of the growth which investors believe to be in prospect. In my judgment, the estimation should be made by reference to growth in earnings in order to eliminate short run variations in dividend payout ratios. Others, however, have argued that growth in dividends are also relevant, perhaps more relevant, in spite of variations in the dividend payout ratio. Thus this method of estimating investor expectations introduces an area of uncertainty, or disagreement. But it is the only way to estimate current cost of common stock capital by reference to stock market prices. Because of this area of uncertainty I would not recommend that sole reliance be placed by the Board on the capitalization-rate method of estimating the fair rate of return on the common stock equity. The method should only be used in conjunction with the comparable earnings method, or standard."

In Exhibit 5 he presents a series of schedules to demonstrate trends in earnings per share for Canadian Western and for five electric and seven gas utility companies operating in Canada for each of the years 1959 to 1969 using 1959 as the base year index 100.

Selecting the years 1959, 1964 and 1969 the schedules illustrate the following growth:

<u>Growth in Earnings</u>	<u>Canadian Western</u>	<u>Electric Utilities</u>	<u>Gas Utilities</u>
1959	100.0	100.0	100.0
1964	115.1	160.7	221.3
1969	135.8	198.2	342.9
<u>Growth in Dividends</u>			
1959	100.0	100.0	100.0
1964	168.4	162.7	193.6
1969	231.6	218.4	344.6

The five company electric group which are listed in Appendix B of Schedule 5 appear to represent long established

electric companies whose operations have become stabilized.

The natural gas group of seven companies includes companies operating in the rapidly expanding eastern Canadian gas market and in addition, Alberta Gas Trunk Line Company Limited whose operations have rapidly expanded as a result of large volume exports of natural gas from Alberta since 1961. In the Board's view these companies are not comparable to Canadian Western which is a well seasoned company operating in Alberta since the early part of the century and the growth trends indicated for the gas utility group are of no value to the Board as a guide to the level of earnings which should apply to Canadian Western.

Excluding the gas utility group the compound average growth rate of earnings and dividends on equity of Canadian Western compared with the electrical utility group for the years 1959 to 1969 is as follows:

	<u>Canadian Western</u>	<u>Electric Utilities</u>
Compound growth		
Rate of Earnings	4.4%	5.8%
Compound growth		
Rate of Dividends	7.2%	5.5%

The comparable rate of return on equity earned by Canadian Western to that earned by the seven electrical utilities is:

	<u>Canadian Western</u>	<u>Electric Utilities</u>
1959	17.03%	13.4%
1963	12.42	12.3
1967	12.11	11.8
1969	13.04	11.6
	Van Scoyoc Ex.11-P.14	Schantz Ex.5 Sch.24

Mr. Schantz suggests that an indication of the rate investors are currently capitalizing current income on equity capital is determined by adding the average compound growth rate in earnings to the current dividend yield. The results

obtained for the year 1969 are as follows:

	<u>Canadian Western</u>	<u>Electric Utilities</u>
Average compound growth rate in earnings	4.40%	5.80%
1969 dividend yield rate	<u>6.62</u>	<u>4.79</u>
Indicated capitalization rate	<u>11.02%</u>	<u>10.59%</u>

He suggests that by substituting the average growth rate on dividends for that of earnings, which some analysts consider more relevant, the indicated capitalization rate is:

Canadian Western	13.8%
Electric Utilities	10.3%

He further suggests that if the two methods are combined with 2/3's weight given to the compound earnings basis and 1/3 weight to the compound dividend basis the results are:

Canadian Western	12.0%
Electric Utilities	10.5%

He also referred to the capitalization rates of the gas utility group. This group, as the Board has indicated, do not afford a comparable basis for measuring the return on Canadian Western's equity.

At page 175 of the transcript he explains that,

"The difference between investors' capitalization rates and the current cost of equity capital is the costs which are experienced by the enterprise, as distinguished from the investor, in obtaining the necessary capital. These costs take two forms. The first is "Market Pressure" or the discount from the quoted prices of bonds or stocks established in small-lot trading, necessary to move the relatively large blocks which must be sold to finance growth of utility and other companies. The second difference is represented by the cost of legal and accounting work, registration fees, underwriting commissions and printing, advertising and taxes involved in an issue of securities.

I will make an allowance of 10% for market pressure and cost of financing combined. This may be below the necessary level required to sell substantial

"blocks of equity in 1969 and 1970 but I have made no specific study of market pressure experience in recent years.

After adjusting for market pressure and financing costs, the current cost of equity capital for Canadian Western may be estimated at about 13.2%.

and at page 176:

"In applying the comparable earnings method, I have looked to earnings as a percent of the mid-year, or average, book value of the common stock equity, for the reason that the Company is seeking a rate of return applied to a mid-year rate base. The results of these studies are set out at Schedule 24 of the exhibit over the period 1959 to 1969.

In the first column of this schedule, the rate of return earned on common stock equity is set out for the reference group of electric utilities. The data show that these electric utilities earned, on the average, between 12.5 and 13.0% over the period of 1959-1965. This earnings level, however, has declined in recent years as a result of inflation and increasing costs of capital. With electric utilities currently seeking rate increases or planning to seek rate increases, it is apparent that the more recent earnings levels are depressed, and therefore not useful as a measure of alternative opportunities. Accordingly, it is appropriate to use 12½ to 13% as indicated earnings rates for electric utilities. Looking back at Schedule 6 it is seen that these earnings rates for electric utilities pertain to a capital structure consisting of about 40% equity.

The reference group of gas utilities have followed a different trend, enjoying strong improvements in profit ratios as the result of rapid growth in the interprovincial transmission of natural gas produced in Alberta. These profit ratios ranged from about 11 to 12% during the years 1961 to 1964 and have averaged about 14.5% from 1965 to 1969. Although some gas companies have been and currently are seeking and enforcing rate increases, I will use a rate of return on the equity of 14½% as a reasonable measure of earnings for this segment of industry. This earnings rate would be applicable to a capital structure consisting of about 30% in equity."

On being asked by counsel if the earnings ratio for the electric and gas reference groups should be adjusted for comparability with Canadian Western, he replied:

"Yes. Risk adjustments are necessary. Such adjustments, are, of course, a matter of judgment and cannot be precisely measured. Size, density of market, and inter-

"fuel competition are relevant industrial risks which, in my judgment, tend to moderately favour Canadian Western comparative with the gas group. Difference in the capital structure represent a financial risk. The relevant capital structure for Canadian Western presents an equity ratio which is slightly thinner than the average equity ratio for the electric reference group but slightly thicker than the average equity ratio for the gas reference group.

Taking these matters into consideration, it is my judgment that evidence with respect to alternative opportunities for investment in other gas and electric utilities is reflected by a rate of return earned on the common stock equity at a level of 13 $\frac{1}{2}$ % for other gas companies and 12 $\frac{1}{2}$ % for electric companies."

His conclusion of the cost of equity for Canadian Western, without any allowance for inflation, is:

"The cost of common stock capital for Canadian Western is 13.2% when measured by reference to the capital attraction standard and is in the range of 12.5 to 13.5% when measured by the reference to the comparable earnings standard."

To allow for inflation he constructed Schedule 25 of Exhibit 5 restating common stock equity additions from 1960 to 1969 in current dollars.

The increase in the original dollar investment and accumulation in equity compared with the current dollar value thereof is 8%, which Mr. Schantz suggests is the adjustment necessary to the rate of return on equity. With this adjustment he considers that a rate of 13 $\frac{1}{2}$ % is a fair and reasonable rate.

At page 184 he says:

". It is my conclusion that the fair rate of return for Canadian Western Natural Gas Company should be expressed in a zone of reasonableness with a rate of return of 8.75 representing the lower zone of reasonableness and 9.35 representing the upper zone of reasonableness."

To test the overall rate of return earned on total capital Mr. Schantz prepared Schedule 27 which includes the average return for the years 1959 to 1969 for a group of thirteen non-regulated medium size Canadian manufacturing industries. The schedule indicates an overall rate of return on average total capital for these companies for the year 1969

at 2.5% above the electric utility group and 1.3% above the gas utility group.

* * * * *

Mr. Bernstein disagrees with Mr. Schantz' calculation of compound growth rates as shown in Schedule 22 of Exhibit 5. At page 647 Mr. Bernstein says:

" Mr. Schantz makes a fundamental mathematical error on Schedule 22 of his Exhibit 5. In calculating growth rates he establishes compound rates of growth for various periods. This calculation is all right. But when he comes to establishing a growth rate to use for his D.C.F. formula, he takes a simple average of the compound growth rates for the various periods.

In calculating growth rates, two kinds are possible to determine, one, the simple average rate or two, the compound rate. The two are separate and distinct and cannot be combined, as Mr. Schantz has done.

The so-called average of the compound growth rates shown on Schedule 22 is a meaningless calculation. The growth rate of Canadian Western's earnings per share for the period 1959-1969 is either 3.1 per cent compounded annually, or some other percentage on a simple average basis determined by taking the total growth in earnings and dividing by the period of years covered. Thus, the D.C.F. capitalization rate based upon earnings growth rate is the 6.62 per cent dividend yield plus the 3.1 per cent growth rate, or 9.7 per cent.

But based upon the growth rate in dividends per share, the capitalization rate becomes the 6.62 per cent dividend yield, plus the 8.8 per cent growth rate, or 15.4 per cent, not the 13.8 per cent Mr. Schantz refers to on page 174 of the record - a not insignificant difference.

In my opinion, this large disparity between these two calculated figures, the 9.7 and the 15.4, points up the rather large distortions it is possible to achieve by use of the D.C.F. method for determining the cost of common equity capital."

In rebuttal Mr. Schantz disagrees he has made a fundamental error saying:

" I am not aware of any expert who says you cannot average compound growth rates. It is done, as

"I call attention to in my rebuttal, on a number of occasions, where one will utilize the present value table or a compound interest table. I do it here. I believe it to be a reasonable and fair arithmetic computation. I know of no reason why it is not."

Table 22, which is the subject of this disagreement, is reproduced below:

COMPOUND RATE OF GROWTH IN EARNINGS
AND DIVIDENDS PER SHARE

	<u>Canadian Western</u>	<u>Electric Utilities</u>	<u>Gas Utilities</u>
	<u>Growth in Earnings</u>		
1968-1969	9.1%	7.1%	(0.3)%
1967-1969	7.3	4.4	3.0
1966-1969	2.7	5.0	5.1
1965-1969	0.7	4.7	12.9
1964-1969	3.4	4.3	9.2
1963-1969	4.9	5.5	11.1
1962-1969	4.1	5.7	10.9
1961-1969	4.0	7.0	10.5
1960-1969	4.6	6.8	11.2
1959-1969	<u>3.1</u>	<u>7.1</u>	<u>13.1</u>
Average	4.4	5.8	8.7
	<u>Growth in Dividends</u>		
1968-1969	15.8%	-0- %	10.9%
1967-1969	10.6	1.7	13.5
1966-1969	3.2	3.1	15.2
1965-1969	5.1	4.4	13.5
1964-1969	6.6	6.1	12.2
1963-1969	5.5	6.6	11.6
1962-1969	5.6	7.0	12.1
1961-1969	5.8	9.4	12.4
1960-1969	5.1	8.5	15.8
1959-1969	<u>8.8</u>	<u>8.1</u>	<u>13.2</u>
Average	7.2	5.5	13.0

It will be observed that if Mr. Schantz had selected the compound growth rate of 4.6% for the years 1960-1969 this would have been at a percentage 0.2% higher than the average of all years.

It will be recalled that the Board revised Canadian

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Western's rate of return in its Decision No. 23616, dated March 4, 1959, and higher rates to consumers were approved by the Board for Canadian Western after that date. In addition during the year 1960 Canadian Western issued additional common share capital in the order of \$2.0 million.

With these events the Board considers that the year 1959 cannot be considered as a typical year and a more representative period to determine growth would be for the period 1960-1969. The Board considers, therefore, that the results obtained by Mr. Schantz in the preparation of Schedule 22 are reasonable results and do not warrant the criticism offered by Mr. Bernstein.

Mr. Bernstein also criticised Mr. Schantz for the $\frac{2}{3}$ weighting which he gives to the compound earnings basis and the $\frac{1}{3}$ weight given to the compound dividend basis. This criticism appears warranted. It appears to the Board that if these methods are proper for establishing a capitalization rate the compound earnings basis is the one that should be used. This is a rate made up of the average compound growth rate in earnings plus the 1969 dividend yield rate.

Mr. Bernstein, in his direct testimony, said the best measure of return, but not the only one, is the rate of return the investor has been willing to accept in the past, is currently receiving, and will accept for the future, i.e., the investors' capitalization rate.

In discussing the defects in the earnings on book capital approach as a means of determining a return on equity, he said:

" One of the most basic defects is that there is no way to determine from these experienced earnings on book capital of utility companies whether they reflect a fair and reasonable rate of return or something else. The returns earned by unregulated enterprises certainly cannot be assumed to be a fair and reasonable level for these purposes. In my opinion, it would be unreasonable to assume that such percentages represent reasonable rates of return on the capital of utility companies per se.

Utility companies, for the most part, occupy a monopolistic economic position. On the other hand,

"non-regulated Industrials are competitive, to a large degree, and the prices of their products are established on this basis. The returns vary greatly among different types of businesses, and even among companies in the same business. Also, the volatility of earnings levels are much greater for non-regulated industrials than for regulated utilities. This makes for great differences in risk and earnings comparisons."

and at page 622:

". If we are concerned with a natural gas distribution company, as we are here, it may be possible to select a group of similar gas distribution companies and arrive at a valid opinion as to the relative risk between the utility in question and the group, either singly or as a whole. Many basic considerations are the same for all - they are all regulated; they use the same technology; they sell the same product and their cost patterns should be similar. Against these similarities we consider the possible differences and the reasons behind them if we can find them - capital structure, operating area and its prospects; sources of supply and its adequacy; and so forth.

In this situation by looking at certain financial and operating characteristics, we can make a valid judgment that the distributing company in question is of similar, less or greater risk than the others. That is, it represents about the same, better or worse quality of investment opportunity as that of the ones chosen as comparable. But having arrived at this judgment, we must still turn to the market place to determine on what terms investors are willing to purchase the earnings of these companies."

For his choice of comparative groups Mr. Bernstein, like Mr. Schantz, chose groups of Canadian gas utilities and electric utilities. He restricted his choice of gas utilities to five engaged in distribution and to four electric utilities.

The companies chosen are among the groups chosen by Mr. Schantz but Mr. Bernstein does not include:

With respect to the gas group:

Alberta Natural Gas Company

Alberta Gas Trunk Line Company Limited

With respect to the electric group:

Canadian Utilities, Limited.

As the Board said earlier in this decision, the gas distribution companies operating in a rapidly expanding consumer

market have, in the Board's view, little value for comparative purposes to Canadian Western's operations which have now become stabilized insofar as growth and volume of sales are concerned.

On page 4 of Mr. Bernstein's report, Exhibit 8, he sets out a schedule of market prices, earnings per share and earnings-price ratios for Canadian Western for each of the years 1960-1969. The average earnings-price ratio for this period is 6.94%. For the same period the average ratio for the electric companies was:

Calgary Power Ltd.	6.16%
Great Lakes Power Corp'n.	7.35%
Newfoundland Light & Power	8.48%
Nova Scotia Light & Power	6.62%

He said in computing the cost rate of equity capital allowance must be made for pressures caused by marketing additional shares. He stated that in determining the rate which he considered applicable to Canadian Western's equity he would make an allowance of 10% for this pressure.

On being asked if he considered that investors in equities were buying future or anticipated earnings, he replied:

"Yes I do. What the investor is purchasing is the present earnings for as long as he maintains his investment. Thus, there are these two things encompassed in the purchase. But, the actual cost of common equity capital cannot be determined by future hopes and expectations. Credence must be given to the past earnings in order to reach a judgment about the future, and this is expressed by the earnings-price ratios as shown on page 4, 5 and 6 of my exhibit."

His estimate of the cost of equity of Canadian Western is within a range of 10% to 10½%. At page 638 he gives his reasons for coming to this conclusion, saying:

"In determining the proper cost rate for common equity capital, I first gave consideration to the average earnings-price ratio for Canadian Western as shown on page 4 of 6.94 per cent. Then I considered the average earnings-price ratios for the five comparable natural gas distribution companies shown on page 5, as well as the group average for those same five companies, and the same data for the electric group on page 6.

" Adjusting these ratios for cost of flotation and pressure resulted in average earnings-price ratio for the five comparable gas companies was 6.17 per cent, and that of the electric group was 7.94 per cent.

Further, in order to reasonably assure an earnings level, based upon the investors' capitalization rate, which would enable the company to attract additional common equity capital in the future at something above book value to avoid dilution of the present stockholder equity position, I made an additional adjustment to the already adjusted gas and electric companies' earnings-price ratios of 25 per cent by multiplying them by 125 per cent. This is also equal to allowing a compound growth rate on earnings of 4.5 per cent per annum for a period of five years - Canadian Western's average growth rate for the period 1960-1969.

This then, produced a range of adjusted earnings-price ratios of from 9.64 per cent for Canadian Western; 6.39 to 9.69 per cent for the five gas distributors; and 8.55 to 11.78 per cent for the electric group. The adjusted group average earnings-price ratios were 7.71 for the gas company group and 9.93 per cent for the electric company group.

For the second adjustment of 25% he said:

"The basic reason for this adjustment is to allow maintenance of the market price of the common stock within a reasonable relationship to its book value, based upon the investor's capitalization rates as expressed by the earnings-price ratios. Since we are using the concept of trying to determine what the current cost of common equity capital over a representative period of time is, the relationship of the market price to the book value enters into the concept of regulation on an original cost rate base. Most leading authorities in the field of public utility economics agree that the market price should bear a reasonable relationship to book value under this regulatory philosophy. The problem comes down to quantifying what is reasonable. This cannot be done with mathematical or statistical precision, just as most economic theories are not subject to exact measurement."

* * * * *

Mr. Stanley, in his testimony, expressed the opinion that Canadian Western would have great difficulty marketing common shares in the next few years even under the rates proposed by Canadian Western.

His opinion is no doubt influenced by comments which he made that Canadian Western could not sell any significant issue of common shares at present, i.e., September 22, 1970, because of a generally poor stock market (the Toronto Industrial Index having declined from a 1969 low and high of 164 - 199 to a low and high for 1970 to September 1 of 142 - 187).

In addition, he also comments on the effect of the tax reforms contained in the Federal Government White Paper on public utility shares of all types.

He presented a schedule of selected data which was entered as Exhibit 4. This schedule indicates that a Calgary residential gas consumer using 215 mcf. of gas per year paid \$97.12 in 1960 and \$101.90 in 1968, the latter amount having been paid for each of the years 1962 to 1968. In 1969 and 1970 the amounts are:

1969	\$98.78
1970	\$93.79

These reductions no doubt result from the income tax rebate flowing to the consumer under the provisions of The Utility Companies Income Tax Rebates Act, cap. 380, R.S.A. 1970.

Exhibit 4 also contains data on the price movements of Canadian Western common shares for the years 1960 to 1969 compared with the Toronto Stock Exchange Industrial Index.

The Board's staff have used this data to prepare average indices, using as a base 1960 = 100.

The resulting indices are as follows:

	<u>Toronto Industrial Index</u>	<u>Canadian Western Common Share Prices</u>
	<u>Average</u>	<u>Average</u>
1960	100.0	100.0
1961	122.2	105.4
1962	120.2	106.2
1963	128.6	115.1
1964	151.7	108.9
1965	164.5	121.7
1966	153.7	120.1
1967	157.6	108.5
1968	165.0	97.6
1969	178.8	103.8



The above indices indicate that industrial stocks in the group used by the Toronto Stock Exchange to construct its industrial index, rose, on the average, 78.8 points from 1960 to 1969. Canadian Western shares, on the other hand, rose only 3.8 points.

Similarly, treating the consumer price index at a base 100 for 1960 and the cost of 215 mcf. of gas purchased by the consumer in 1969 at a base of 100 the comparative indices are:

	<u>Consumer Price Index</u>	<u>Cost of Gas</u>
1960	100	100
1961	101	101
1962	102	105
1963	104	105
1964	106	105
1965	108	105
1966	112	105
1967	116	105
1968	121	105
1969	127	102 *

(*) Includes adjustment for income tax rebate to the gas consumer.

* * * * *

I. R. Barnes in his text "The Economics of Public Utility Regulation at page 524, commenting on the rules contained in the language of the Court in the Bluefield case, supra, said:

" This 'rule' merits careful analysis. The first sentence, calling for a consideration of 'all relevant facts' and the exercise of 'enlightened judgment,' may be said to describe the general procedure (or frame of mind) in which the courts are told to approach all matters pertaining to the review of rates established by legislative authority.

The second sentence describes the standard for judging whether rates are confiscatory: 'the utility is entitled to such rates as will permit it to earn a

"return on the value of the property . . . equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.' The standard itself is patently vague and subject to uncertainty. It is clear that the Court is speaking only of what the utility is entitled to demand. That which may be demanded as a right is a return equal to that generally being made on like investments. The difficulties of identifying like investments and of reconciling the inevitable differences in the return being earned by 'like investments' are not explored. Nor does the Court state explicitly whether 'other business undertakings' refers to other utilities, whose earnings may approach the monopoly level if they are not subject to effective regulation, or to the earnings of competitive business enterprises. Logically the second standard is the sounder, although the practical difficulty of identifying the 'corresponding risks and uncertainties,' and interpolating the results where the risks and uncertainties are not exactly 'corresponding' calls for a difficult judgment. In principle, however, the reference to the 'right to a return' to the competitive standard has much to be said for it; it recognizes that the investors in the utility are not entitled, even indirectly, to profit from any monopoly advantages which the company may enjoy."

Reference can also be made to Francis X. Welch in his text "Cases and Text on Public Utility Regulation" published in 1968. Dealing with the determination of a reasonable rate of return Mr. Welch, at page 487 of the text, says:

" The problem of determining a reasonable rate of return for a given public utility enterprise involves the practical consideration of whether it will be able to compete with others in the capital money markets. 'Others,' in this context, mean both other utilities and nonutilities. Capital funds go to the highest bidder for them, other things being equal. Those with money to invest are going to get the highest price they can. In fixing a reasonable rate of return, the commission must take into account the sound business reality that the return should be sufficient to enable the company to go into the money markets on a favorably competitive basis.

If public utilities companies were competing, area-wise, with each other (such as is the case with non-utilities), prices would be controlled by the free play of economic force. But regulation is a necessary substitute for such forces in the special case of public utility operations. Therefore, utility commission regulation has the responsibility of determining what rate results would be produced and what profits would be earned if such free competitive economic forces were at work. Then the

"utility regulators must allow the establishment of reasonable service rates sufficient in amount to protect the rate of return."

Mr. Bernstein and Mr. Schantz have limited their comparisons in determining the level of returns to which Canadian Western is entitled to returns being experienced by other utilities. Mr. Schantz did refer to the overall return of thirteen selected industrial enterprises in testing the overall rate of return of Canadian Western but he provided no details of the capitalization of such enterprises nor to the rates of return being earned on the segments of such capitalization.

Mr. Bernstein rejects the proposition that the returns earned by unregulated enterprises can be assumed to be a fair and reasonable level for measuring the return of utilities.

There is no question that utilities must compete for funds in the capital market with all other enterprises including both regulated and unregulated. It appears to the Board, therefore, that some analysis of the operations and returns being experienced by unregulated industries with which the utility companies compete for funds is just as essential as the analysis of earnings being received by other utility companies with which Canadian Western must also compete for funds.

There is no doubt that the operational features, capitalization ratios, capital intensities and business and financial risks may be quite different in non-regulated enterprises from those of regulated enterprises. Nonetheless the Board considers that a skilled analyst can, with his broad experience, make what adjustments between the two are necessary to effect the comparability required.

The Board considers that if comparisons are restricted to regulated industries there is the distinct possibility of reliance being placed, in determining a fair rate of return, on the findings of the regulating agencies which establish the rate of return for such industries. The Board, by this statement, does not intend to infer that the results of regulated industries be ignored. The returns earned by such industries are of valuable assistance to be used as an aid in measuring



the return of similar industries. Sole reliance, however, should not be placed on such information for comparative purposes. Reference should also be made to the returns of non-regulated industries choosing as a sample those industries which are generally non-monopolistic but of a size and type which can be employed with the least amount of judgment adjustments to provide comparability with the regulated industry sample. This, to the Board's mind, is a step which must be taken to provide data with respect to the results of competitive forces in the capital market. Such considerations appear to have been in the minds of the Courts who have issued judgments on this subject. In the Northwestern Utilities case, supra, Lamont J. said,

By a fair return is meant that the company will be allowed as large a return on the capital invested in the enterprise as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise.

Butler, J. in the Bluefield case said,

A public utility is entitled to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.

Douglas, J. in the Hope case, supra, after saying that there should be enough revenue not only for operating expenses but also for the capital costs of the business, said,

By that standard the return to the equity holder should be commensurate with the returns on investments in other enterprises having corresponding risks.

The degree of risk, will, of course, vary between one utility and another and between one non-regulated enterprise



and another. It follows as a corollary, therefore, that the degree of risk will vary between a utility and unregulated enterprises and between some other utility and unregulated enterprises and vice versa.

It is understandable that unregulated industries generally are faced with a higher degree of business risk than are regulated industries. Regulated industries are provided a degree of protection from competition in the sale of their product which the unregulated industry may not enjoy. Furthermore, unregulated industries are generally subject to a greater degree by the effect of cyclical movements in the economy, that is, the ebb and flow of consumers' willingness or ability to purchase their product.

On the other hand, regulated industries, with a larger ratio of funded debt and preferred capital and a smaller ratio of equity capital than that of non-regulated industries, are burdened with fixed capital service costs and its attendant risks because of the thinner equity margin than is usually the case of non-regulated industries.

As the Board has indicated earlier, the main point of contention between the opinions of the experts is the level of return which should be attributed to the equity capital of Canadian Western. Mr. Schantz suggests the rate should be 13.2%. Mr. Bernstein suggests a range of 10% to 10½%.

In arriving at these rates, Mr. Schantz considers earnings-price ratios of no use and instead employs a discounted cash flow technique referred to by him as the D.C.F. method. He described the method in these words:

" In summary, since current dividends or earnings anticipated by investors in common stocks, it is necessary to estimate the growth which investors believe to be in prospect. Having made this estimate it is then possible to determine the rate of discount which equates the future flows of money anticipated by the investor with the market price of the stock which they pay in order to be entitled to these future monies.

This rate of discount is sometimes called the discounted cash flow, or DCF, rate. It is also called the capitalization rate. This capitalization rate can be manually determined by taking the current cash dividend per share and increasing this dividend in accordance with the anticipated growth in earnings and

"dividends into the future. By trial and error, a capitalization rate can be determined which discounts these future income flows back to the current value of the stock.

It can be also demonstrated mathematically that this capitalization rate is the sum of the current dividend yield plus the anticipated annual average growth in earnings or dividends."

This method, as the Board understands it, consists of a determination of the present value of a stream of future dividends increasing annually at a growth rate developed from past records, to be continued into perpetuity, the capitalization rate being determined on the basis of the present market price of the common shares.

Mr. Bernstein on the other hand relies to a large degree upon the rates indicated by earnings-price ratios of past years as an aid to estimating future expectations.

The Board views with skepticism the discounted cash flow method as a means of arriving at a fair return on common equity. This is a method which can be employed in measuring the economic feasibility of a planned business venture on a fixed interest rate but to employ it as a means of determining the return on common equity in a market as volatile as the stock market is, in the Board's view, of doubtful validity.

As the Board observed in the Canadian Utilities case "the lack of stability in common stock prices (market swings) must have, in the Board's view, a marked effect on the valuation results obtained, no matter what method of calculation is employed."

The Board, earlier in this decision, has referred to the market prices, on an index basis, of Canadian Western's common shares compared to the Toronto Industrial Index. This comparison indicates a wide range of differences between the two.

Canadian Western had outstanding at December 31, 1969 1,780,000 common shares, part of which were issued for undertaking, gas rights, etc. recorded on the company's books at \$8,000,000. This amount has been excluded in calculating Canadian Western's rate base. Of the 1,780,000 shares issued, 87.7% thereof are reported in the survey of industrials

published by the Financial Post to be held by Canadian Western's parent, International Utilities Corporation, which leaves, in the hands of the public, approximately 220,000 shares. This is a very small number of shares for trading on the stock exchanges from which the market price has been established, which brings into question the reliability of such prices.

Mr. Van Scoyoc, in Exhibit 11, provided a schedule setting out the rate of return on the book equity of Canadian Western's common shares for the years 1959 to 1969.

Mr. Schantz, in Exhibit 5, provided a schedule setting out the rate of return on the book equity of the common shares of the electric and gas utility groups which he chose for comparative purposes for the same period.

The Board, earlier in this decision, has referred to the level of return of Canadian Western and the electric group as shown by these schedules and has set out reasons for rejecting for comparative purposes the rates earned by the gas utility group. It is generally recognized that returns for gas utilities can be expected to be slightly higher than the returns of electric utilities due to the differential in risk of the two types of operation. Comparing the returns of Canadian Western on its common shares with those obtained by the electric group, which are referred to at page 37 of this decision, Canadian Western has a return rate somewhat higher than that earned by the electric utility group. Canadian Western's rate in 1969 was 13.04% compared to the electric group return of 11.6%. Canadian Western's 1969 rate is higher than the rate of 10½% recommended by Mr. Bernstein and lower than the 13.2% rate recommended by Mr. Schantz.

Canadian Western requests a return of 8 5/8% on its rate base. This rate will provide a return on the common share capital of Canadian Western for the year 1971 of approximately 12.3% which, to the Board, appears to be in a just and reasonable range.

After reviewing the evidence and the expert opinions expressed and after having considered the arguments of counsel the Board has reached the conclusion that the 8 5/8% rate of return asked for by Canadian Western is a just and reasonable

rate, fair to the customers on the one hand and on the other hand sufficient to maintain the financial integrity of Canadian Western and enable it to compete in the market for such additional capital as it may require.

Accordingly, therefore, the Board finds and will allow Canadian Western a rate of return of 8 5/8% on a depreciated original cost mid-year rate base as set forth in Schedules "A" and "B" of this decision.

OTHER REPRESENTATIONS

Several communities whose residents are served with gas by Canadian Western forwarded letters to the Board objecting to the increase in rates asked for by Canadian Western. The Village of Rosemary, on whose behalf Mr. Gabert appeared when preliminary matters were spoken to on August 21, 1970, forwarded a seven-page brief to the Board outlining its reasons for objecting to the increase applied for. The Board compliments the Village on the manner in which this brief was prepared but unfortunately the Village did not make available a witness at the hearing to present the brief nor was it represented after Mr. Gabert appeared at the time the preliminary matters were spoken to. Accordingly, therefore, no opportunity was given to the various parties to cross-examine on the points raised by the Village in the brief which it submitted.

The Board has a statutory duty to hear all parties at the hearing of such an application and it is incumbent on any party opposing or wishing to make representations to appear and be heard. The relative section of The Gas Utilities Act providing for this requirement is Section 27(a), which is as follows:

" 27. The Board, either upon its own initiative or upon complaint in writing, may by order in writing, which shall be made after giving notice to and hearing the parties interested,

- (a) fix just and reasonable individual rates, joint rates, tolls or charges or schedules thereof, as well as commutation and other special rates, which shall be imposed, observed and followed thereafter by the owner of the gas utility,"

Mr. Wolstenholme, the Mayor of the Town of Nanton, and Mr. Wallace, the Municipal Secretary of the Town of Vulcan, appeared at the hearing and informed the Board they were supporting the submission made by the City of Lethbridge. Western Canadian Co-operative Fertilizers Limited, who were represented by counsel at the hearing, filed a submission which was accepted by the Board as Exhibit "J" but no witness was called by that Company to give evidence although counsel informed the Board at the hearing that David Wood of the Company was available for questioning.

Counsel for the Village of Linden questioned witnesses of Canadian Western on the prices of gas purchased by Canadian Western for supplying the residents of the Village and with respect to the rates charged to such residents. Reference was also made by counsel to the rates paid by members of the Kneehill Gas Co-operative, it being suggested by counsel that if the Village operated its own system the rates would be lower than those proposed by Canadian Western. This line of questioning was of little assistance to the Board. The evidence indicates that the members of the co-operative are each required to make a capital contribution in the order of \$1,200 toward the cost of the gas facilities used by the co-op. and as a result obtain their gas at a lower rate than that proposed by Canadian Western.

Mr. Little testified on behalf of the City of Lethbridge, reading into the record a brief prepared by the City of Lethbridge setting forth the position taken by that municipality. The brief generally opposes the increased rates applied for by Canadian Western. Mr. Little, under cross examination, stated the brief was prepared by many people with the result that he was unable to answer many of the questions concerning the brief raised by counsel for Canadian Western. The cross-examination is contained on pages 782 to 786 of the transcript. From an examination of the brief and the schedules contained therein and after considering the testimony of Mr. Little and his answers in response to the questions which he was asked the Board is unable to place any reliance upon the submission made.

Counsel for Lethbridge, in his argument, refers to many

matters which do not appear relevant to these proceedings some of which include a reference to those of the population on pensions and retired persons who are unable to meet the proposed rate increase; the unemployed in the Southern Alberta labor force; the differential between the farm price index and the farm cost index, to name a few.

He also argues that because of its failure to submit for consideration the contracts which it has with customers not included in the various rate schedules submitted Canadian Western has negated its rights before the Board and the Board cannot now make a decision.

The rate schedules referred to in the material filed at the hearing are listed in Exhibits 6 and 7 filed by Canadian Western. These schedules include rates applicable to commercial and industrial customers as well as domestic customers, both within and without franchise areas in which Canadian Western is the holder of franchise agreements with the cities, towns and villages in which it provides service. The schedules also include rates applicable to farm and rural customers.

This leaves for consideration customers with special interruptible service contracts; The Alberta Gas Trunk Line Company Limited and Lake Louise extension services. Canadian Western's estimate of the total volume of gas to be sold in 1971 is 84.416 bcf., of which the three groups above referred to are estimated to require 9.979 bcf., which represents 11.8% of the total.

The Board discussed this matter in Decision No. 12189, dated December 2, 1949, which dealt with the rates proposed at that time by Canadian Western. Referring to Section 67 of The Public Utilities Act as it then was, which is now Section 34 of The Gas Utilities Act, and which reads as follows:

" 34. In considering and acting upon any application or matter before the Board and involving the question of rates to be charged for service by any owner of a gas utility, the Board shall not make any ruling or direction to raise rates for any such service beyond the amounts that the owner of the gas utility desires to impose."

the Board, at page 20 of Decision No. 12189, said:

" Even if cost allocation is capable of scientific application, the result is at best a mere starting point and in the progression from that point, the historical background of rates, the preservation of existing loads, and the necessity of attracting new loads must be taken into account. A strict application of a truly scientific allocation might easily impose a burden on one class of customer with a corresponding benefit to others. In other words, cost allocation without the application of judgment based upon knowledge and practical experience might very well produce an inequitable result. With all deference to the learned and able witnesses who supported one group or another, the Board must recognize that the persons who are most capable of exercising that judgment and producing an equitable result are the Company officials who must retain existing customers and attract new ones. Indeed it is for these very reasons that generally speaking utility practice concedes that the making of rate schedules is primarily a function of management calling only for regulatory interference if the rate schedules evolved can be clearly demonstrated to be so unfair and unjust that interference is warranted.

For the Board to make refinements in any company's allocation, unless they are patently unfair, or for the Board to substitute its judgment in the final application of the cost schedules if they are reasonably fair and just, is to usurp the functions of management. That usurpation would be still more pronounced if it yielded to the solicitation of those who look to their interest only and not to that fairness and equity which should be extended to all groups."

If it can be said that there is discrimination in favour of certain customers, and it is probably difficult to avoid some discrimination, the Board is satisfied, on the basis of the evidence and the material submitted by Canadian Western, that there is no evidence to support the allegation that the rates proposed are "unreasonable or unjustly discriminatory or unduly preferential".

PROPOSED RATES

In the Canadian Utilities' case Decision No. 29845 dealing with the second phase of that case which had reference to establishing rates, the Board said at page 58:

" The Board has a statutory duty to fix 'just and reasonable rates' the measure of which is tempered by the language contained in Section 87 of The Public

"Utilities Board Act. In that section, dealing with the duties and obligations of utility companies with regard to rates that may be imposed, the words 'unjust or unreasonable or unjustly discriminatory or unduly preferential' are used. These words, therefore, in the Board's view, establish the parameters that must be used in establishing the justness and reasonableness of the rates."

The above quotation refers to Section 87 of The Public Utilities Board Act. Similar language is also contained in Section 24 of The Gas Utilities Act.

Mr. Snyder, under whose supervision the rates proposed by Canadian Western were constructed, testified as to the manner in which the cost of service analysis was made and the rates designed. Mr. Snyder has many years' experience with Canadian Western in this field and appeared before the Board and testified as to the design of rates at the 1959 hearing. The method employed in designing rates is by allocating a cost of servicing its customers on what might be referred to as a "cost of service basis". Mr. Snyder in his testimony, commencing at page 284 of the transcript, outlined the principles which he had followed in designing the rates, saying:

"There are many considerations to be kept in mind when designing a schedule of utility rates. One consideration is that rates should be so set that customers of different sizes, and having different load characteristics, will pay their fair share of utility costs. Another consideration is the effect of competition from other fuels or from other sources of natural gas supply. The Company has, on a number of occasions in the past, pointed out that rates designed strictly on a 'cost of service' basis are not necessarily best suited to meet such competition, and that some variation from a 'cost of service' approach would be desirable if necessary to retain existing customers with favourable load characteristics and attract similar new ones. At present, however, in the Company's opinion, a close adherence to cost patterns is still practicable in most rate groups, although it should be recognized that competitive factors do exist in some segments of the Company's business, particularly in respect to large industrial loads.

In order to determine the fair share of total utility costs which are applicable in the various rate areas to customers of different sizes and having different load characteristics, an analysis of all utility costs is required. It should be made clear that the term 'utility

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"costs" includes all annual costs, not only operation and maintenance expenses, taxes and annual depreciation, but also return on rate base, so that the total of all the annual utility costs equals the total allowable annual revenue.

The total annual costs of a utility depend on the number of customers served, the total annual quantity of its commodity sold, and the peak demand which must be provided for. Utility costs can be classified in accordance with these three factors. There are certain costs which result entirely from the fact that a specific number of customers are connected to the system, regardless, within certain limits, of the size of these customers or their load characteristics. These are called 'customer costs,' and vary only with the number of customers, being independent of the volume of gas delivered, or the maximum rate of delivery, -- for example, the cost of meter reading, billing, fixed charges on minimum-sized distribution mains, services, meters, and so forth.

The second class of costs is related entirely to the total quantity of the commodity distributed, and has no relationship to the number of customers or their maximum demand. These are known as 'commodity costs'. The major item of such costs is the cost of gas purchased at flat rates to meet the annual requirements of the customers.

Costs in the third class are called 'demand costs,' and are those incurred in order that the necessary commodity, equipment and personnel shall be available and ready to deliver gas to all customers at any and all times to the full extent of the customers' maximum requirements or demand commitments.

While the theory of cost allocation is readily understandable, and the definitions of the three classes of costs appear precise, the making of an actual cost allocation is difficult, and, to a large extent, arbitrary. Certain utility costs are readily assignable as 'Customer,' 'Commodity' or 'Demand', but there are large numbers of utility costs whose allocation to 'Customer,' 'Commodity' or 'Demand' can only be made by the application of judgment.

Certain costs, such as those arising from distribution plants and transmission line extensions, can be specifically identified with and therefore assigned to the particular rate area concerned, without the necessity of an allocation to 'Customer,' 'Commodity' and 'Demand.' However, in order to determine the share of such costs fairly applicable to the various rate groups within the area, such an allocation still must be made."

In his direct testimony Mr. Snyder said a change had been

made in the manner of allocating transmission pipeline costs. He said that formerly such costs had been treated as being 100% allocable to demand, which was the basis used in the 1959 allocation. The revision which is now proposed is an allocation of 25% as representing commodity costs and 75% as representing demand costs. In explaining this change he said at page 291:

"In previous submissions before the Board, transmission costs are entirely allocated to demand, that is 100% for demand, and in my view, that allocation is quite proper in that of the three elements of customers annual sales and peak demand only one is involved in the design of a transmission line, and if all customers' peak demands coincided at the time of the coldest day of the year, at time of system peak demand then the appropriate distribution of costs arising from these transmission lines would be solely on the basis of their peak demands. However, there are a number of customers on the system who use gas solely in the summertime, other customers whose peak demands are interruptible, and other customers who have available other fuel to use at time of system peak demand for peak shaving purposes to reduce the magnitude of demand charges. The distribution of transmission pipeline costs solely on the basis of peak demand would mean in effect that to the extent that certain customers do not use their full supply of gas at this time of system peak they would not be assigned a share of transmission demand costs. Now, it is not considered appropriate that anybody in effect should get a free ride on facilities designed to meet peak loads, and in order to assign some share of transmission demand costs or rather I should say of transmission costs to these off-peak or seasonable customers, an allocation of 25% of the costs have been assigned to the commodity component, in which all customers share. I might add, Mr. Massie, that this goes some direction or some distance in the direction that was advocated by representatives of the cities of Calgary or Edmonton, perhaps both in previous proceedings where their experts pressed for the inclusion of some significant amount of transmission cost to the commodity element, and although not necessarily for the reasons that were advocated by the cities expert witnesses, we have in effect given effect to their representatives to some extent by this allocation of 25% of transmission costs to the commodity component."

On being questioned by counsel for the City as to why the transmission line costs were not allocated 50% to commodity and 50% to demand as advocated by the City in 1959, he said:

"I believe I indicated, Mr. Moore, that, in my view, transmission costs are solely a demand function. In

"the design of a transmission system, the number of customers served by that system, the annual consumption served, are not in themselves a criterion which dictates the capacity which must be installed. There is one factor, and one factor only, of the three elements in our cost analysis which is concerned in the design or capacity of a transmission system and that is demand. And if all customers were year-round customers with peaks occurring on the coldest day of the year, the allocation of transmission costs solely in relation to the peak demands of customers would be an appropriate treatment in my view. However, there are other customers, as I mentioned in my direct examination, whose demands occur at times other than the time of system peak demand. We do not have a great deal of such business, but there are a few seasonal or interruptible customers, and it is because of those customers that we felt it appropriate that some share of transmission costs should be borne by them, even in the absence of any coincident peak demands, at the time of peak load, or where they only impose a portion of such at the time, and this is accomplished by assigning some portion of the cost to commodity. Now, this is truly a judgment as to how much should be so allocated. And, in my view, 50% would be too much, Mr. Moore, because, basically, we must consider this, that the capacity must be provided to supply the system peak demand at its maximum extent. This occurs on the cold winter day. And in the summertime we have, in effect, a considerable amount of capacity lying idle, and it is desirable to promote as much business as possible which can be served by making use of spare capacity without the requirement to instal an additional dollars worth capacity in the system. And it is to the benefit of all customers that we encourage such business. And if we attempt to recover as much share of the cost to that business as to customers whose demands dictate the amount of capacity to be installed, it would discourage the acquisition of such business and make it more difficult for us to acquire. And, therefore, in our judgment, it is purely a judgment call. The assignment of 25% accomplishes the purpose at least of ensuring that all customers will bear some proportion of the transmission costs. It would be undesirable to go too far in that respect and prejudice our ability to connect such off-peak sales to the system."

Mr. Van Scoyoc suggests that a 50-50 division should be used. At page 995 he said:

"My review of the Company's evidence and working papers has convinced me that the methods and procedures followed by Mr. Snyder has resulted in some degree to an erroneous assignment of the overall cost of service to the various rate groups and rate schedules as shown on Statement C.W.-51, Exhibit 7.

The general effect of Mr. Snyder's cost allocation

"has been to assign a larger share of the total cost of service to the general service class of customers, that is, the residential and commercial customers on rate 1 than is proper. There are three major areas where, in my judgment, this situation has occurred. The first is in the classification of the rate base and operating expenses into the three categories of customer, demand and commodity costs with particular reference to the transmission and distribution properties expenses. The assignment made by Mr. Snyder in regard to the transmission system is based on assigning 75% of the cost to demand and 25% to commodity. This ratio was the personal judgment determination of Mr. Snyder. In my judgment this division should have been on a 50-50 basis. There are many precedents for using such a division of joint costs for gas companies. In regard to the distribution system property and expenses, that is, that related to mains, service meters and house regulators, Mr. Snyder has followed a procedure which involves estimating the cost of a hypothetical or phantom minimum size distribution system, which is incapable of providing service to customers and assigning the estimated cost of such a system to the customer category. The balance of the distribution system costs were assigned to the demand category. The proper basis of classification of distribution costs is to confine the customer costs to those items for which the customer is directly responsible, that is the costs of services, meters and house regulators and their operation and maintenance. These are the only items which would be idled by the discontinuance of service by a customer.

The effect of the procedure followed by Mr. Snyder is to build up costs which are then allocated to rate schedules on a pro rata basis, and thus relieve the larger customers of costs which they should bear. There is virtually no acceptance of this hypothetical minimum system approach by regulatory commissions."

He also disputes the basis used by Mr. Snyder in determining peak-day values to allocate demand costs. He suggests that the use of a minus 35° mean temperature, which is substantially below the averages of the lowest mean temperatures over a long period of years, is unrealistic.

Calgary contends that a long term average of the annual low mean daily temperatures are more appropriate for use in constructing peak demands for cost allocation purposes.

Mr. Snyder describes why the minus 35° basis was used by Canadian Western in the following words:

"We don't determine the potential peak demands on the basis of any prediction as to what the maximum



"temperature will be for any period. It is an experience over many years by the company that it can anticipate that its maximum potential demand will be encountered at a temperature of 35 degrees below zero and the temperature of minus 35 has been used as an intercept on this sales temperature graphical experience to determine an estimate of the potential demand which will occur under the worst possible conditions of cold temperature and high wind and the company designs its facilities to be capable of being able to meet demands imposed under those conditions. Whether or not those conditions occur in any particular winter or not is, in the company's procedure, immaterial; the company feels it must provide the capacity and, therefore, the cost attributable to the assets employed in making that capacity available to the customer should be assigned to each rate group on the basis of potential demands obtained by determining the demand which would be derived at an intercept of minus 35 degrees."

There is no question that in this Province the extreme variations in temperature, particularly during the winter months, place heavy demands upon Canadian Western charged with providing the amount of gas required by customers to maintain temperatures in their domiciles and their places of business in the comfort range. The Board questions the wisdom of using a long-term mean temperature for this purpose. The reports published by the Federal Government Meteorological Branch, Calgary, indicates that during January 1969 the recorded temperatures for the last days of the month were:

	<u>Low</u>	<u>High</u>	<u>Mean</u>
January 28	- 36	- 23	- 30
January 29	- 38	- 23	- 32
January 30	- 36	- 13	- 25

On these days the meteorological Branch reports that the maximum wind speed was respectively 10 m.p.h., 6 m.p.h. and 8 m.p.h., with the average wind speed being 4.2 m.p.h., 5.1 m.p.h. and 5.7 m.p.h. The average wind speed for the month was 7.7 m.p.h. compared with a normal wind speed of 9.7 m.p.h.

The forecasting of any natural phenomenon cannot be done with any degree of certainty and certainly weather forecasting is no exception.

In considering this matter the Board can find no reason to vary the basis used by Canadian Western who, as the Board

has pointed out, have an obligation to meet the demands of its customers under the most critical circumstances that may reasonably arise.

* * * * *

That differences of opinion exist between those engaged in designing rates there can be no doubt.

James C. Bonbright in his text "Principles of Public Utility Rates" at page 125 thereof, in referring to demand costs, says:

" Of all of the many problems of rate making that are bedeviled by unresolved disputes about issues of fairness, the one that deserves first rank for frustration is that concerned with the apportionment among different classes of consumers of the demand costs or capacity costs--those costs of service that are regarded as a function of required plant capacity and not of rate of output in kilowatt-hours, cubic feet of gas, ton-miles of traffic, etc. Should the capacity costs be assigned to the different consumers on the basis of system peak responsibility, or of coincidental class demand, or of any one of the other thirty-odd proposed bases of assignment to be found in the literature of rate theory? Here, notions of 'fair apportionment' are almost sure to conflict with economists' convictions as to the relevant cost allocations. But these notions are themselves neither stable nor uniform, although they reveal a general tendency in favor of a fairly wide spreading out of the costs, as butter would be spread over bread in a well-made sandwich. Awareness of these unresolved conflicts about 'fair' cost apportionment has led the British economist Professor W. Arthur Lewis to exclaim that, in rate determination, 'equity is the mother of confusion'."

In any design of rates a large measure of judgment has to be employed. In the Board's view there cannot be a precise answer, and dependence must be placed upon the opinions expressed and the methods used by those engaged in rate development.

The Board is satisfied that while some variation would no doubt result if another engineer designed the rates for Canadian Western, nevertheless the method used by Mr. Snyder, the explanations which he has given and the detailed cost analysis which he has prepared leads the Board to the conclusion that the rates proposed are fair and reasonable to the customers on whom they are to be imposed.

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The Board sees no reason to vary such rates and therefore, confirms that the interim rates authorized by Order No. 30122, dated January 11, 1971, are hereby confirmed as the rates approved for Canadian Western effective on and after February 1, 1971 as in Order No. 30122 provided. Furthermore, the Board finds that the condition under which approval of the interim rates was granted under Order No. 30122 which provided:

" The rates shown on Schedule "A" are subject to review by the Board and may be reviewed, altered or changed as the Board may direct and the Applicant shall refund to its customers such amount as the Board may direct with respect to any rates which the Applicant may collect by virtue of the rates fixed by this Order which may not be approved by the Board following its decision on the application by the Applicant for changing the rates which it may charge its customers."

BE AND IS HEREBY REVOKED.

Costs of the parties appearing will be borne by Canadian Western at such amount as may be agreed upon by the parties, failing which as fixed by the Board. Such costs will be included in the rate base and amortized by Canadian Western and allowed as an operating expense at an amount not exceeding \$40,000 per annum until fully amortized.

DATED AT EDMONTON, in the Province of Alberta, this Fourth day of June, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. NOBBS

CHAIRMAN

(SIGNED) W. D. ABERCROMBIE

MEMBER

(SIGNED) H. A. WILLIAMS

ACTING MEMBER

Secretary

certified a true copy.

THIS IS SCHEDULE "A" REFERRED
TO IN DECISION NO. 30253 OF
THE PUBLIC UTILITIES BOARD,
DATED THE FOURTH DAY OF JUNE,
A. D. 1971.

SCHEDULE OF RATE BASE AND RATE OF RETURN

	<u>1969</u>	<u>1970</u>	<u>1971</u>
Estimated property, plant and equipment at year end	<u>\$80,825,000</u>	<u>\$85,929,000</u>	<u>\$91,280,000</u>
Less:			
Accumulated Amortization	24,190,000	26,324,000	28,536,000
Contributions for Extensions	2,624,000	3,274,000	3,824,000
Deferred tax reserve	<u>355,000</u>	<u>305,000</u>	<u>254,000</u>
	<u>27,169,000</u>	<u>29,903,000</u>	<u>32,614,000</u>
	<u>\$53,656,000</u>	56,026,000	58,666,000
Add previous year balance		<u>53,656,000</u>	<u>56,026,000</u>
		<u>109,682,000</u>	<u>114,692,000</u>
1/2 thereof		54,841,000	57,346,000
Working capital allowance		<u>2,000,000</u>	<u>2,000,000</u>
RATE BASE		<u>\$56,841,000</u>	<u>\$59,346,000</u>
8 5/8% Rate of Return		<u>\$ 4,903,000</u>	<u>\$ 5,119,000</u>

THIS IS SCHEDULE "B" REFERRED
TO IN DECISION NO. 30253 OF
THE PUBLIC UTILITIES BOARD,
DATED THE FOURTH DAY OF JUNE,
A. D. 1971.

SCHEDULE OF ESTIMATED REVENUE AND EXPENDITURE

	<u>1970</u>	<u>1971</u>
Gas sales at rates prevailing at the date of the application	\$25,711,000	\$27,859,000
Gas transported and stored	444,000	465,000
Other income	<u>335,000</u>	<u>315,000</u>
	<u>26,490,000</u>	<u>28,639,000</u>
Deduct Expenses:		
Gas supplies including expense	9,157,000	10,852,000
Operation	4,337,000	4,843,000
Maintenance	1,086,000	1,183,000
Administration and general	1,971,000	2,069,000
Not enumerated		<u>126,000</u>
	<u>16,551,000</u>	<u>19,073,000</u>
Taxes other than income	1,954,000	2,007,000
Provision for depreciation and amortization of plant	<u>1,884,000</u>	<u>1,962,000</u>
	<u>20,389,000</u>	<u>23,042,000</u>
Estimated income before income tax	6,101,000	5,597,000
Less income tax	<u>1,984,000</u>	<u>1,564,000</u>
Utility income (old rates)	4,117,000	4,033,000
Allowed rate of return 8 5/8%	<u>4,903,000</u>	<u>5,119,000</u>
Deficiency	<u>\$ 786,000</u>	<u>\$ 1,086,000</u>
Estimated additional revenue to meet deficiency		\$ 2,342,000
Less - Estimated franchise revenue tax		<u>126,000</u>
		2,216,000
Less - Estimated income tax		<u>1,130,000</u>
		<u>\$ 1,086,000</u>



File: P.U. 3751-1(A)

IN THE MATTER OF "The Public
Utilities Board Act":

AND IN THE MATTER OF an application by The Alberta Union of Rural Electrification Associations to the Public Utilities Board for an order fixing costs incurred by the said Association arising out of an application made by Canadian Utilities, Limited to the Board for a revision of its rates:

APPEARANCES:

A. M. Brownlee, Esq., Q.C. : For The Alberta Union of
E. J. Walter : Rural Electrification
: Associations

B. V. Massie, Esq., Q.C. : For Canadian Utilities, Limited

FIXING OF COSTS

The Alberta Union of Rural Electrification Associations (hereinafter referred to as "the R.E.A's") by a notice returnable on June 1, 1971 have applied to the Board for an order fixing the costs of the interveners arising out of an application by Canadian Utilities, Limited (hereinafter referred to as "C.U.L.") for a revision of the rates to be charged by C.U.L. to its customers.

The Board heard the application of C.U.L. and rendered two decisions, being:

Decision 29547, dated October 16, 1969, wherein the Board determined C.U.L's rate base and its revenue and expense requirements for each of the years 1969 and 1970;

Decision 29845 (Second Phase), dated May 25, 1970, fixing the rates to be charged by C.U.L.

An application was made to the Board by C.U.L. subsequent to the Board issuing Decision 29547 for an order fixing the costs associated with the proceedings which culminated in that



- 2 -

decision and the Board, by Order 29798, dated November 5, 1969, fixed such costs.

The R.E.A's application now before the Board is with respect to the costs associated with the proceedings which had reference to the rates which C.U.L. would be permitted to charge its customers, on which the Board rendered Decision 29845.

The matter of costs of the interveners on the "Second Phase" application has been before the Board on other occasions, the last of which resulted in the Board issuing Decision 30202, dated March 29, 1971. In that decision the Board observed:

" In this application counsel are not asking the Board to act as a taxing officer but are asking the Board to state the principles which should be applied in assessing costs in rate hearings so that counsel will be furnished with guide lines for negotiating agreement of the costs in the second phase hearing."

In Decision 30202 the Board, after reviewing the nature of a rate hearing and the costs associated therewith, also said:

"In the Board's view, all the costs must meet the test of reasonableness."

In its concluding remarks the Board said:

"Failing the agreement of counsel as to costs, within a reasonable period of the date hereof, costs will be fixed in such amount as may be determined by the Board."

The Board was informed by counsel for C.U.L. that agreement of counsel had been reached between all the parties with the exception of the R.E.A's which has resulted in the present application.

* * * * *

There is abundant evidence that considerable time was spent by counsel for the R.E.A's and the experts which they retained to prepare the material and evidence upon which the exhibits and evidence adduced at the hearing were based.

The extent of the work done both by counsel and the witnesses called by the R.E.A's is evident from the review of the evidence which the Board made and which is referred to in the second phase Decision 29845.

Counsel for C.U.L. objects to the amount claimed by the R.E.A's as being excessive and he refers to the costs which were agreed to by counsel for the other interveners who participated in the proceedings. This, however, in the Board's view, is not the basis upon which the test should be made. Consideration must be given to the extent of the participation and its value in assisting the Board in arriving at its decision. It should also be pointed out that the costs being claimed by all parties do not represent the whole of the costs related to the rate hearing for which claims are submitted by all counsel. C.U.L., in support of its application, called as a witness its Superintendent of budget and rates and the Board believes that the time expended by this witness and the technical staff which assisted him is probably absorbed in general utility expense rather than being specifically segregated as part of the costs in preparing and presenting the application to the Board.

* * * * *

There can be no doubt that the determination of the manner in which costs of service should be allocated equitably among the various classes of customers is a complex matter requiring the application of the skills of highly trained experts.

As the Board pointed out in Decision 30202, "Without the active participation of interveners represented by able counsel and without having the benefit of the testimony of expert witnesses whose qualifications are equal to those presented by the company, the Board would have an almost impossible task to adjudicate fairly". The need, therefore, of able counsel and technically qualified experts to represent the interest of consumers is unquestionable. It only remains to determine the reasonableness of the charges they make for

such services.

The Board is of opinion that the R.E.A's are entitled to such reasonable costs as they may have incurred but, for the reasons expressed by the Board in Decision No. 30202, the Board will not allow additional costs which depend upon the success or failure of any party to a rate proceeding. Furthermore, the costs which they claim must bear a direct relationship to the application before the Board. There cannot be included costs which were incurred with respect to matters not specifically associated with the application concerning rates to the consumers with which the Board dealt in the second phase application.

The Board has carefully reviewed the material submitted by the R.E.A's in support of their claim and has also carefully considered the argument of counsel.

The Board finds that the amount of \$22,000 included in the R.E.A's claim under the caption "account for results achieved" is not an amount properly claimable under a proceeding of the nature discussed in this order and is, accordingly, disallowed.

With respect to the balance of the claim, THE BOARD FINDS AND IT IS HEREBY ORDERED that the costs to which the R.E.A's are entitled, including disbursements and the costs of expert witnesses, should be and are hereby fixed in the amount of \$107,000.

AND IT IS FURTHER ORDERED that such costs be paid forthwith by C.U.L.

DATED AT EDMONTON, in the Province of Alberta, this 8th day of June, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. NOBBS

CHAIRMAN

(SIGNED) W. D. ABERCROMBIE

Certified a true copy.

MEMBER

Secretary

NO. 30261



File: Ex-Co-27-191

IN THE MATTER OF "The Pipe Line
Act"; and

IN THE MATTER OF "The Expropriation
Procedure Act"; and

IN THE MATTER OF an application to
the Public Utilities Board by
Hudson's Bay Oil and Gas Company
Limited for an order granting to the
Applicant a right-of-way 60 feet in
width over, across and under certain
lands for the purpose of constructing
and maintaining an oil pipe line and
fixing the amount payable by the
Applicant for such interest and for
incidental damages and costs.

BETWEEN:

HUDSON'S BAY OIL AND GAS COMPANY LIMITED

Applicant

- and -

SIMPSON RANCHING LIMITED
and C. L. RANCHES LTD.

Respondents

APPEARANCES:

R. J. Hazlett, Esq.	:	for Hudson's Bay Oil and
	:	Gas Company Limited
	:	
J. L. Simpson, Esq.	:	for Simpson Ranching Limited

D E C I S I O N

This is an application by Hudson's Bay Oil and Gas Company Limited (hereinafter referred to as "the Applicant") to the Public Utilities Board for an order declaring the estate or interest to be granted to the Applicant over, across and under certain lands owned by Simpson Ranching Limited (hereinafter referred to as "the Respondent") for the purpose of constructing and maintaining an oil pipe line and fixing the amount of money payable by the Applicant for such interest and for incidental damages and costs.

The land required for the right-of-way is described as follows:

A strip of land 60 feet in uniform width throughout situate in the South East Quarter of Section One (1), Township Twenty-seven (27), Range Five (5), West of the Fifth Meridian, in the Province of Alberta, containing three and seventy-five hundredths (3.75) acres more or less; EXCEPTING thereout all Coal and Petroleum and all other Minerals.

The right-of-way is delineated on a plan registered in the Land Titles Office for the South Alberta Land Registration District as Plan 4936 J.K.

The original authorization for the Applicant to enter upon the land for the purpose of commencing construction was granted by the Board by its Interim Order No. 27661, dated July 4, 1966, and this date, accordingly, becomes the effective date of the expropriation. Subsequent to the issuing of said Order, the subject property was purchased by the Respondent. One of the terms of the agreement for sale and purchase was that the purchaser (Respondent herein) take over all rights against the Applicant in respect to the vendor's (Respondent named in Interim Order No. 27661) claim arising out of the construction of the pipe line across the subject property.

The subject property was described as being located approximately thirty-two miles from the City of Calgary and approximately five miles north and four miles west of the Town of Cochrane. It is bounded on the east by a municipal road which has not been gravelled adjacent to the property. The topography of the quarter was described as gently rolling to rolling and was, at the date of expropriation, and still is being used for agricultural purposes, namely, pasture or



grazing land. It was stated that a good view of the mountains may be obtained from the property and that water was readily available from 60 foot wells. The pipe line right-of-way crosses the most easterly portion of the subject property, running slightly diagonally in a north-south direction. It enters the quarter on the south boundary at a point approximately 55 feet from the road at the south-east corner and exits at a point approximately 110 feet from the road at the north-east corner thereof.

Mr. N. T. J. McNally, a land consultant and appraiser called by the Applicant, expressed the opinion that the market value of the subject property, as of July, 1966, was \$100.00 per acre. In support of this opinion he listed in his Appraisal Report, a copy whereof was duly filed as Exhibit 191-4, the particulars of the sales of four parcels of comparable farm lands which had taken place in the general area. Mr. J. L. Simpson, who acted as the representative for the Respondent throughout the hearing, advised the Board that he did not dispute the appraisal of land value in the area, which he considered to be irrelevant, and then asked Mr. McNally if he had made an appraisal of the value of the inconvenience caused to the owner by the granting of the right-of-way.

After a brief discussion regarding the usual procedure followed by the Board with respect to applications for final vesting and compensation orders for pipe line rights-of-way, Mr. Simpson took the stand and tendered to the Board a brief outlining the views of the Respondent with respect to the application. The brief, which was entered as Exhibit 191-5, had attached thereto a drawing which showed thereon:

- (a) the general location of the subject property and

- other land holdings of the Respondent in relation to the Town of Cochrane and Highway 1 A; and
- (b) the location of the right-of-way across the subject quarter section of land.

Several submissions were outlined in the brief, the first being that, by virtue of the fact that the requested right-of-way runs close to and very nearly parallel to the east boundary of the quarter, access to this property would be interfered with and it was requested that certain terms and conditions be incorporated into the Board's final order. Such terms and conditions are set out in the brief, as follows:

- " a) The right to use the easement for agricultural purposes.
- b) The right to cross the easement with those services which may be required in the future development of this land such as roads, sewer, water lines, power lines, telephone lines, T.V. cables, fences, wells, and any other services.
- c) Should relocation of the pipe line be required to accommodate any of the services outlined in item (b), then the cost of this relocation and subsequent damages should be borne solely by Hudson's Bay.
- d) Agreement that this easement is for the pipe line as built and that no further construction can take place within this easement by Hudson's Bay.
- e) Should Hudson's Bay require access to this easement for any purpose, then they will be required to make good any damage they may cause and reimburse the owner for all damages.
- f) That Hudson's Bay file with the owner a satisfactory Liability insurance policy covering themselves for all risks which may occur to the owner as a result of granting this easement.
- g) That the marking of the line be restricted to one painted stake at either end of the easement.

- "h) That the grass cover be made equal to and maintained in a state equivalent to the cover on either side of the easement for as long as this land shall be used as pasture. The cost of this requirement and the execution to be handled by Hudson's Bay.
- i) The easement requested is 60 feet wide however, by Provincial building by-law the owner is restricted from building within 50 feet of such a line consequently we are in reality discussing a 100 foot easement - or approximately 6 acres."

Speaking generally of the matter of the imposition of special terms and conditions in a vesting and compensation order, the Board has consistently held and is still of the opinion that it does not have the jurisdiction to grant an order which purports to make a declaration covering any matters other than those specifically set out in subsection (2) of section 35 of The Expropriation Procedure Act. After having examined the authorizing Act to ascertain whether or not the application requesting the acquisition of an estate, interest or right in land is properly made, the Board must then conduct a hearing and make an order declaring, briefly

- (a) the estate or interest in the land granted to the Applicant;
- (b) the description of the land to which the order relates;
- (c) the names and addresses of interested parties;
- (d) the amount of money payable for the estate or interest granted;
- (e) the amount of money payable for incidental damages; and
- (f) the costs of and incidental to the application and by whom payable.

It appears, from the statute, that the Board's main function in expropriation applications of this nature is to determine the amount of money payable by the applicant company for the taking and using of land, which would include compensation to owner and incidental damages.

Dealing specifically with the items referred to in the brief in the order shown therein the Board would comment thereon as follows:

- (a) The Applicant has assured the Respondent that he may use the requested right-of-way for any and all agricultural purposes.
- (b) This item is subject to negotiation between the Applicant and the Respondent if and when the need arises. This is one item, however, that must be borne in mind by the Board when it considers damages under the head of injurious affection.
- (c) Same comment as in (b) above.
- (d) The Board order granting to the Applicant an interest in land will relate only to the pipe line specifically mentioned in the Permit which was filed with the Board on this particular application.
- (e) Damages arising out of an entry by the Applicant upon the right-of-way subsequent to the granting of the final order herein, if not settled, must be determined by a civil court in the Province.
- (f) This is a matter beyond the Board's jurisdiction to direct.
- (g) Same comment as in (f) above.

- (h) Reconditioning and restoration of the right-of-way are recognized items of damage and will be considered by the Board in awarding compensation.
- (i) This matter will be given consideration by the Board under the head of injurious affection.

The brief also contains an expression of opinion by the Respondent that present market value of the subject property is \$250.00 per acre. This opinion was not supported in any way by market data and does not appear to relate back to the date of expropriation. In the circumstances the opinion of market value expressed by the land appraiser called by the Applicant of \$100.00 per acre will be used by the Board when making its award for compensation for the interest in land acquired by the Applicant.

The submission made by the Respondent that an annual rental be paid for the right-of-way has been considered by the Board on different occasions and it has always concluded that it had the power only to make an award specifying a lump sum payment. This view is supported upon examination of the provisions contained in section 37 of The Expropriation Procedure Act, which reads as follows:

"37. Upon the making of an order by the Board pursuant to this Part and upon the Board certifying in writing that the company has paid all the sums of money payable pursuant to the order or, in the alternative, that the company has deposited with the Board a sum sufficient to pay all sums payable under the order, the company acquires an immediate right to enter upon, take and use the land in the manner described in the order."

The Board therefore must, as provided by the statute, certify that all sums have been paid or provided for in the

order which the Board issues. Accordingly, in the Board's view, no award in the nature of a rental payment may be made.

With respect to the reconditioning and restoration of the right-of-way, Mr. Simpson filed with the Board a memorandum (Exhibit 191-6) which contained therein the amounts of money, per acre, that the Respondent was claiming for the various operations required to re-grass the area. The Applicant did not take objection to the figures cited but did call evidence regarding the length of time that it would take to obtain a good grass recovery. Mr. Simpson was of the opinion that after the initial reseeding and fertilizing procedure had been completed, the land would have to be fertilized annually for the following nine years. He suggested further that the same program would have to be repeated every following ten years or until the property had been put to some other use. Mr. McNally, testifying for the Applicant, was of the opinion that, under normal weather conditions, if the land was properly worked a good grass cover would be obtained in two to three years. He conceded, however, that if a high percentage of clay was present in the trenched area it may take one or two years longer to obtain satisfactory results. Mr. Simpson alleged that the trenched area had not been stripped of top soil prior to the commencement of digging operations and that, as a result, all the top soil was buried with the pipe and nothing was left on the surface but clay. Mr. McNally stated that he had walked the right-of-way and did not observe that this situation existed. The Board is not satisfied, on the evidence before it, that a full ten year program would be necessary to establish a reasonably good grass cover and, using a judgment figure, will base its award under this head, on a five year basis.

In the brief submitted by Mr. Simpson, it was stated that:

" My long range plans for this land is possibly subdivision or as location for my own home."

In the event of subdivision or development of the land to a higher use, the existence of the pipe line would cause a certain amount of inconvenience to the owner and restrict, to some extent, the full and complete development of the property. This possibility appears to be very remote and, in the Board's opinion, would merit no more than a nominal award for possible injurious affection and inconvenience.

Concurrently with this decision the Board will issue its order declaring the interest in land granted to the Applicant and the compensation awarded to the Respondent,

The Respondent is also awarded interest at the rate of 7% per annum on such compensation from the date of the Interim Order to the date hereof.

Costs will be awarded to the Respondent in the sum of \$25.00.

DATED AT EDMONTON, in the Province of Alberta, this 18th day of June, A. D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) K. J. LEATHEM

MEMBER

Certified a true copy.

Secretary

NO. 30267



File: P.U. 4875-A

IN THE MATTER OF "The Gas Utilities Act":

AND IN THE MATTER OF an application by Tilley Gas Company Limited for an increase in the rates to be charged to its customers:

APPEARANCES:

D. C. Crerar, Esq.	:	For Tilley Gas Company Limited
	:	
J. M. Pritchard, Esq.	:	For the Village of Tilley

D E C I S I O N

On January 25, 1971 Tilley Gas Company Limited (hereinafter referred to as "Tilley") made an application to the Public Utilities Board for an "increase in gas rates from the existing to \$3.50 basic and 60¢ additional." The published notice of hearing sets out "that an application has been made to the Public Utilities Board by Tilley Gas Company Limited pursuant to Section 27 (A) of the Gas Utilities Act for an order fixing just and reasonable rates for natural gas supplied to its customers in the Village of Tilley" (hereinafter referred to as "the Village").

The application was heard at the Court House in the City of Medicine Hat on Wednesday, March 31, 1971.

A similar application was made by the Company at a hearing held on March 18, 1970 and the Board, by its Decision No. 29763, issued March 24, 1970, dismissed the application when it found that Tilley "failed to provide proof of need for the increase applied for."

In 1941 the late Mr. F. J. Hankel commenced supplying gas to customers in the Village and on December 6, 1941 Tilley

was incorporated as a limited company to carry on the gas operations initiated by F. J. Hankel. By by-law No. 16, read a first time on February 12, 1942, and approved by The Board of Public Utility Commissioners by Order No. 9426, dated February 17, 1942, the Village granted permission to Tilley to use the public streets, roads, squares, highways, lanes and public places within the Village for its gas distribution system. The schedule of rates which Tilley proposed charging for natural gas was filed with the Board on September 2, 1942 and the rates were as follows:

For domestic use and lighting purposes:

The sum of 35 cents for each one thousand cubic feet;

For power purposes:

The sum of 28 cents per one thousand cubic feet;

ALWAYS PROVIDED that an additional 3 cents per one thousand cubic feet may be charged and collected on all bills or accounts remaining unpaid after 10 days from rendering the same.

By Order No. 14816, issued by The Board of Public Utility Commissioners on August 24, 1953, approval was granted to a variation of the rates effective September 1, 1953, the rates approved being:

For domestic use and lighting purposes:

The sum of 35 cents for each one thousand cubic feet;

For power purposes:

The sum of 28 cents per one thousand cubic feet;

That the above rates shall apply after the first four thousand cubic feet. The charge for the first four thousand cubic feet shall be \$3.00, which shall also constitute the demand or minimum charge.

The changed rates had been agreed to by the Village Council at a regular meeting held August 15, 1953 and are the rates in effect at the present time.

Tilley has operated in the Village and surrounding area without the benefit of a franchise for approximately 30 years. The section of The Municipal Government Act, Chap. 246 of the Revised Statutes of Alberta 1970, that provides for conferring a special franchise is Section 270 (1), which reads as follows:

"270.(1) The council with approval of the Public Utilities Board may enter into a contract with a person undertaking to provide the residents of a municipality with a supply of all or any of the following, namely: telephones, transportation, light, power, natural and artificial gas, water and heat, and confer a special franchise upon that person in respect of the subject matter of the contract for any period not in excess of 20 years."

In August 1970 Tilley had 21 commercial and 75 residential consumers within the Village and 15 farm consumers outside the Village.

When an owner of a gas utility makes an application for a rate increase the Board must, after giving notice to and hearing the parties interested, determine a rate base for the property of the owner and fix a fair return thereon.

At the hearing Tilley submitted a schedule (Exhibit 5) setting out its computation of its rate base for the years 1966 to 1973 inclusive. The rate base for each of these years was determined by Tilley in the following amounts:

1966 - \$20,313.24	1970 - \$18,617.86
1967 - 20,612.26	1971 - 20,718.93
1968 - 19,821.78	1972 - 24,809.73
1969 - 19,110.37	1973 - 28,847.53

Details of the amounts entering into the computation of the rate bases for 1970 and 1971 are as follows:

	<u>1970</u>	<u>1971</u>
Fixed assets - at cost:		
Gas wells	\$ 9,241.73	\$ 9,241.73
Distribution system	27,082.72	32,082.72
Truck	3,317.00	3,317.00
Machinery and tools	1,435.00	1,435.00
Furniture and fixtures	<u>250.65</u>	<u>250.65</u>
	\$41,327.10	\$46,327.10
	=====	=====
Accumulated depletion	\$ 2,376.00	\$ 2,376.00
Accumulated depreciation	<u>22,285.38</u>	<u>23,111.92</u>
	\$24,661.38	\$25,487.92
	=====	=====
Net Value - Current Year	\$16,665.72	\$20,839.18
- Previous Year	<u>17,451.33</u>	<u>16,665.72</u>
	\$34,117.05	\$37,504.90
	=====	=====
1/2 thereof	\$17,058.52	\$18,752.45
Working capital allowance		
1/8 of expenses less royalties and depreciation	<u>1,559.34</u>	<u>1,966.48</u>
Rate Base	<u>\$18,617.86</u>	<u>\$20,718.93</u>
	=====	=====

Except for the cost of the distribution system the fixed asset costs shown above for 1970 are in agreement with the costs of fixed assets shown on Tilley's balance sheet as of December 31, 1970. The balance sheet shows the distribution system at a cost of \$26,046.41 and the difference of \$1,036.31 is an amount that Tilley estimated should be capitalized out

of the repairs and maintenance expenses for the years 1966 to 1970 inclusive.

The Board has examined and analysed the financial statements of Tilley for prior years and has prepared its own evaluation of the net cost that should be allowed in the rate base for the various fixed assets as of December 31, 1970. A summary of the fixed asset costs developed by the Board and the estimated accumulated depreciation associated therewith is as follows:

DISTRIBUTION SYSTEM:

	Cost	Percentage Depreciated	Accumulated Depreciation	Allowable For Rate Base Purposes
1946 & Prior	\$15,050	100%	\$15,050	
1947	1,390	96%	1,334	
1948	1,295	92%	1,191	
1949	1,027	88%	904	
1953	3,949	72%	2,843	
1954	2,500	68%	1,700	
1955	750	64%	480	
1963	<u>85</u>	32%	<u>27</u>	
	\$26,046		\$23,529	
Approximately 1/3 of Repairs and Maintenance 1949 to 1969 inclusive	12,348	Approx. 50%	6,370	
	<u>\$38,394</u>		<u>\$29,899</u>	\$8,495

OTHER EQUIPMENT

1942	\$ 490			
1954	500			
1955	101			
1956	<u>175</u>			
	\$1,266	100%	\$1,266	
1962	2,350	90%	2,115	
1964	467	70%	327	
1966	<u>920</u>	50%	<u>460</u>	
	\$5,003		\$4,168	835
				<u>9,330</u>
GAS WELLS	\$9,242		\$4,742	4,500
				<u>\$13,830</u>

The total cost of \$38,394 that is shown in the foregoing tabulation for the distribution system cannot be considered as representative of the original cost for the system but rather it is used by the Board for estimating the net rate base at December 31, 1970 after making adequate provision for depreciation. Repairs and maintenance expense for the years 1949 to 1969 inclusive totalled \$36,253. From the magnitude of such expense as compared to the original cost of the system it appears to the Board that Tilley charged as an expense amounts that probably were incurred for renewals and replacements. The Board has made a year by year examination of the repairs charged as an expense and where the expense appeared abnormally high in any one year a portion has been considered as of a capital nature. The total for the 21 year period is \$12,348. In its accounting records Tilley has not recorded retirements

from its distribution system by removing the original cost of retirements from the asset account and charging the accumulated depreciation account and it is for this reason that the Board is unable to determine a gross rate base for the distribution system. However, the Board, on the basis of the analysis which it has made, considers that the net value of the distribution system for rate base purposes as at December 31, 1970 is the amount of \$8,495 as shown in the foregoing computation and this is the amount that will be allowed.

The Board, when determining the accumulated depreciation has used straight line rates of 4% per annum on the distribution system and 10% per annum for the other equipment. Mr. T. F. Hankel, manager of Tilley, testified that the distribution system was completely revamped in 1953 and 1954 and that much of the system must be rebuilt in the next 2 to 3 years. Tilley has proposed that a depreciation rate of 2% per annum is applicable. The Board does not consider that a rate as low as 2% per annum is realistic for the Tilley system when the evidence submitted to the Board indicates that major revamping was undertaken in 1953 - 1954, only 13 - 14 years after commencement of operations and that at the present time, some 17 years later, the system must again undergo a major upgrading. The Board considers that under the circumstances existing in this case 10 years would be an equitable amortization period for the net value of the distribution system at December 31, 1970 and will allow \$850 per year therefor to be included in Tilley's expenses commencing in the year 1971. Depreciation on distribution system additions subsequent to December 31, 1970 will be allowed at 4% per annum. Other equipment, which consists principally of

automotive equipment, probably has a short life and the Board feels that a depreciation rate of 10% of cost per annum is appropriate and will be allowed for utility purposes. The cost of other equipment, amounting to \$5,003, and the accumulated depreciation, amounting to \$4,168, as of December 31, 1970 shown in the foregoing tabulation will be allowed for rate base purposes.

Gas well costs are shown on Tilley's balance sheet as at December 31, 1970 in the amount of \$9,242 with a reserve for depreciation applicable thereto in the amount of \$2,376. From evidence submitted at the hearing it appears that no pressure or test data is available on the two gas wells that are the source of supply for the Tilley system. The production history of the gas wells was summarized by Mr. N. J. Lashuk, P. Eng. in a letter to Mr. A. K. Sinclair (Tilley's accountant) as follows:

	<u>Tilley #1 Well</u> <u>Sec. 19-17-12-W4</u>	<u>Tilley #2 Well</u> <u>Sec. 24-17-13-W4</u>
	<u>M.C.F.</u>	<u>M.C.F.</u>
Prior to 1960	110,908	112,964
1960 to 1969	150,172	146,461
1970 (6 months)	<u>8,835</u>	<u>8,839</u>
	269,915	268,264
	<u><u> </u></u>	<u><u> </u></u>

Considering the size of the pools from which the wells produce Mr. Lashuk indicated in his letter that the wells should be capable of producing at the average volume of the past years for at least another ten years and probably twenty years. Tilley's estimate of annual production is 31,000 M.C.F. and the total production for the next fifteen years at this rate would amount to 465,000 M.C.F. Considering the amount of gas already produced from the wells and assuming a future life of fifteen years it appears that less than 50% of the recoverable reserves

will be produced in the next fifteen years. In other gas utility hearings which have come before this Board gas well costs have been amortized on a unit of production basis and the Board has used this basis in estimating that Tilley's net gas well costs in the amount of \$4,500 as at December 31, 1970 are properly allowable for rate base purposes. The Board considers that the net value of \$4,500 should be amortized over fifteen years at an annual amount of \$300 per year commencing with the year 1971.

Tilley submitted a schedule, Exhibit 7, which shows an estimated cost of \$19,704.50 to install 8,500 feet of pipe over a four year period 1971 to 1974 or at approximately \$5,000.00 per annum. In order to compare Tilley's estimate of the cost of materials and construction with estimates submitted by the Village (Exhibits 10 and 11) the Board has converted the figures in Tilley's estimate to a per foot basis and a summary of the three estimates appears below:

	<u>Ex. 7</u>	<u>Ex. 11</u>	<u>Ex. 10</u>
	<u>Tilley</u>	<u>A & R Oilfield Construction</u>	<u>R.M.C. Oilfield Services</u>
	<u>Per Ft.</u>	<u>Per Ft.</u>	<u>Per Ft.</u>
MATERIAL:			
Pipe	\$.76	\$.75	Not quoted
Other	<u>.61</u>	<u>Not quoted</u>	<u>Not quoted</u>
	\$1.37	\$.75	-
	=====	=====	=====
OTHER COSTS:			
Welding	\$.50	\$.18	)
Ditching	.35	.24	) \$.54
Wrapping Joints and Tees	<u>.04</u>	<u>.03</u>	)
	\$.89	\$.45	\$.54
	=====	=====	=====
TOTAL	\$2.26	\$1.20	\$.54
	=====	=====	=====

After examining the evidence submitted the Board has come to the conclusion that \$1.87 per foot is a reasonable cost to use in estimating the total cost of installing 8,500 feet of new pipe. Using the above cost per foot it appears to the Board that Tilley will expend approximately \$16,000 over the next four years or \$4,000 per annum which would have the effect of increasing the rate base commencing with the year 1971.

Details of the net cost of the property allowable for rate base purposes at December 31, 1970 have been set out on page 6 of this decision and schedule "A" to this decision shows the estimated mid-year rate base for the year 1971.

A working capital allowance of \$1,750 has been allowed and represents 1/8th of the estimated 1971 expenses exclusive of depreciation and amortization in the amount of \$1,684 and royalties amounting to \$1,550.

Tilley estimates the costs of this rate hearing at \$1,500, which the Board accepts as being reasonable, and directs that Tilley recover the amount over a three year period by charging operating expenses with \$500 each year commencing with 1971. The unamortized balance of these costs at any year end will be allowed in the rate base.

Schedule "B" to this decision sets out the Board's computation of the estimated revenue of Tilley at present rates in 1971 together with the allowable expenses for utility purposes. Certain expenses for 1971 are estimated at a greater amount than the company actually incurred for the year 1970 and for comparison purposes and explanation the relevant increased expenses are detailed hereunder:

	<u>1971</u> <u>Estimated</u>	<u>1970</u> <u>Actual</u>
Payroll and payroll taxes:		
General Manager	\$7,020	)
		)
Office Clerk	1,530	) \$8,505
		)
Mrs. G. Banderob - Officer	300	)
Delivery	58	36
	\$8,908	\$8,541
Canada Pension Plan	86	85
Workmens' Compensation Ins.	75	67
	\$9,069	\$8,693

Tilley requested a salary allowance of \$50 per month for Mrs. G. Banderob, who, as the Board understands, is the majority shareholder and a Director of Tilley, presently residing in Calgary. Considering the size of the operations of Tilley the Board is of the opinion that a nominal amount of \$25 per month should adequately compensate Mrs. Banderob for director and consultation services to Tilley. The allowance in this regard will therefore be \$300 per annum. The other salaries and wages claimed by Tilley appear reasonable and have been allowed.

	<u>1971</u> <u>Estimated</u>	<u>1970</u> <u>Actual</u>
Insurance	\$1,950	\$524
Accounting	\$ 270	\$155

Copies of correspondence which Tilley has had with its insurance broker were submitted at the hearing as part of Exhibit 2 and it appears to the Board that Tilley plans to increase its insurance coverage at a much higher premium. Even at the higher premium any claims under the policy are subject to a deductible of \$1,000 for each occurrence. The Board feels

that it is only prudent management to be fully covered and the increased premiums are allowed.

In prior years it would appear that Tilley has only kept the minimum of accounting records and probably engaged the services of an accountant only to prepare financial statements and income tax returns on an annual basis. In 1963, the Board by Order No. 26402, Alberta Regulation 546/63, prescribed a uniform classification of accounts for natural gas utilities under its jurisdiction. In order to comply with the requirements of the accounting regulation Tilley will have to revise its accounting system and the accountant will have to spend additional time in the preparation of adequate financial statements and reports.

Other expenses estimated by Tilley for 1971 are comparable to actual expenses incurred in 1970, and in some instances are lower, and have been allowed as claimed.

Rate of Return

The balance sheet of Tilley as of December 31, 1970 indicates that the common shareholder's equity is approximately \$24,500 as follows:

Share capital authorized and issued - 200 shares	\$20,000
Earned surplus -	<u>4,500</u>
	<u>\$24,500</u>

The net current assets amount to approximately \$5,600 and the net value of fixed assets is shown at \$18,900. On page 6 of this decision the Board established the value of the fixed assets at \$13,830 for rate base purposes as at December 31, 1970, some \$5,070 less than the value carried on the books. The

operations of this company do not appear to be subject to any expansion and the funds needed to meet the reconstruction program in the next four years will in all likelihood not require the borrowing or investing of additional capital.

Tilley has requested a rate of return of 12% but no evidence was submitted at the hearing to assist the Board in determining whether or not such a rate is fair and reasonable. Tilley is a "family corporation" and while it may have been convenient to finance the gas operations entirely by common capital, it leaves for speculation the capitalization of the company if other forms of capital had been employed. For regulatory purposes, it appears reasonable and proper that the capitalization should be considered as being represented by 50% debt capital and 50% equity.

On this basis the Board is of the opinion, having regard to the limited nature of the utility operation and the size thereof, that a rate of return of 10% on the rate base is adequate to meet the financial requirements of Tilley and is fair to the consumers. The rate of return allowed will, therefore, be 10%.

Rate Schedules

The rates at present being charged by Tilley are as follows:

All consumers:

First 4 M.C.F. -	\$3.00 per month
All additional M.C.F. -	35¢ per M.C.F.
Minimum monthly charge -	\$3.00

Tilley proposes that the rates be as follows:

All consumers within the Village of Tilley:

First 2 M.C.F. or less -	\$3.50 per month
All additional M.C.F. -	60¢ per M.C.F.
Minimum monthly charge -	\$3.50

When accounts are not paid on or before the due date, the charge per M.C.F. other than the first 2 M.C.F. shall be increased by 3¢ and the gross rate so arrived at shall apply.

Farm consumers outside the
Village of Tilley: (Same as presently in effect)

First 4 M.C.F. -	\$3.00 per month
All additional M.C.F. -	35¢ per M.C.F.
Minimum monthly charge -	\$3.00

The farm consumers outside the Village were not notified that Tilley intended to make an application to the Board for a revision of its rates to consumers within the Village as Tilley did not propose that the farm rate be altered. Mr. Hankel testified at the hearing that it was his opinion that the farm consumers should be subject to the same rates as within the Village. Before the Board could consider any increase in the present rates being charged to the farm consumers an application to the Board would have to be made by Tilley to cover this class of consumer in much the same way as the application for Village consumers that is presently being considered in this decision.

Schedule "B" to this decision sets forth the estimated additional revenue which will be required by Tilley to meet the allowed rate of return. Schedule "B" also sets out that an average increase of 22¢ per M.C.F. is necessary to meet this additional revenue assuming that all consumers are charged a monthly minimum of \$3.00 for the first 2 M.C.F. or less. Tilley did not submit any evidence which has convinced the Board that the minimum monthly charge should be increased to \$3.50 but the Board agrees that the volume of gas included in the minimum charge should be reduced from 4 M.C.F. to 2 M.C.F. Tilley's proposed

rate schedules for the Village are rejected in part and the Board allows an increase of 22¢ per M.C.F. in the commodity rate with a minimum monthly charge of \$3.00 for the first 2 M.C.F. or less.

Concurrently with this decision the Board will issue an order relative to the costs of the application and establishing the rates which Tilley will be permitted to charge its consumers for all meter readings from and after July 1, 1971.

DATED AT EDMONTON, in the Province of Alberta, this 30th day of June, A. D. 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) W. D. ABERCROMBIE

MEMBER

(SIGNED) H. A. WILLIAMS

ACTING MEMBER

Certified a true copy,

Secretary.

This is Schedule "A" to the Decision of the Public Utilities Board in the matter of an application by Tilley Gas Company Limited for a review of its rates, dated the 30th day of June, 1971.

SCHEDULE OF RATE BASE AND RATE OF RETURN

1 9 7 1

Additions to property plant and equipment during 1971 - Estimated			\$4,000
Less accumulated depreciation			<u>160</u>
			\$3,840
Net value allowable for rate base purposes as of December 31, 1970		\$13,830	
Less 1971 amortization:			
Distribution system	\$850		
Other equipment	374		
Gas wells	<u>300</u>	<u>1,524</u>	<u>12,306</u>
			16,146
Add previous year balance			<u>13,830</u>
			\$29,976
1/2 thereof			\$14,988
Working capital allowance			1,750
Unamortized rate hearing expense			<u>1,000</u>
Rate Base			<u>\$17,738</u>
10% rate of return			<u>\$ 1,774</u>

This is Schedule "B" to the Decision of the Public Utilities Board in the matter of an application by Tilley Gas Company Limited for a review of its rates, dated the 30th day of June, 1971

ESTIMATED DEFICIENCY AT PRESENT RATES

YEAR ENDED DECEMBER 31, 1971

INCOME:

Gas sales	31,000 M.C.F.	\$13,000
Penalties		<u>350</u>
		13,350

EXPENSES:

Payroll and payroll taxes	\$9,069	
Lease rentals and royalties	1,868	
Insurance	1,950	
Taxes	365	
Repairs and maintenance	410	
Automotive	533	
Office rent	300	
Telephone and office	193	
Accounting	270	
Advertising	75	
Rate hearing	500	
Depreciation and amortization	<u>1,684</u>	17,217

Estimated operating loss at present rates	3,867
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Allowed return	1,774
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Estimated deficiency	<u>\$ 5,641</u>
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Estimated additional revenue to meet deficiency	\$ 6,141
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Less income tax associated with allowed return	500
--	-----

\$ 5,641

Additional rate per M.C.F. on commodity volume of 28,336 M.C.F.	$\frac{\$ 6,141}{28,336} =$	22¢
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IN THE MATTER OF "The Milk Control Act":

AND IN THE MATTER OF "The Public Utilities Board Act":

AND IN THE MATTER OF applications made by the licensed producers and licensed processors and distributors in the Calgary Controlled Area; the Camrose Controlled Area; the Crowsnest Pass Controlled Area; the Edmonton Controlled Area; the Lethbridge Controlled Area; the Medicine Hat Controlled Area; the Ponoka Controlled Area; and the Red Deer Controlled Area to the Public Utilities Board for an increase in the minimum price paid to producers by processors in such areas for No. 2 Price Milk:

APPEARANCES:

B. V. Massie, Esq., Q.C.	:	For Alberta Milk Producers
	:	Association;
	:	Silverwood Dairies Limited;
	:	Northern Alberta Dairy Pool
	:	Limited;
	:	Purity Dairy Co-op Ltd;
	:	Palm Dairies Limited;
	:	Alpha Milk Company, Division
	:	of Central Alberta Dairy Pool;
	:	Union Milk Company, Division
	:	of Silverwood Industries Limited;
	:	Pass Dairy Ltd.;
	:	Ness's Dairy.

D E C I S I O N

Applications were filed with the Public Utilities Board by the licensed producers and licensed processors and distributors in the controlled areas of Calgary; Camrose; Crowsnest Pass; Edmonton; Lethbridge; Medicine Hat; Ponoka; and Red Deer for approval of an increase in the minimum price to be paid by licensed processors to licensed producers for No. 2 Milk. The amount requested is 25 cents per cwt., being an increase from \$3.60 per cwt. to \$3.85 per cwt.



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The Board, after notice to Jasper Dairy Ltd., a licensed processor in the Edmonton Controlled Area, but not a party to the application, heard the application on June 29, 1971.

At the hearing no objections to the increase were made by any party appearing and the Board was informed that the increase in price would not affect the minimum price being paid by the consumer for fluid milk processed in the controlled areas. The price increase may, however, affect those products, other than fluid milk or milk products which are manufactured from milk including cheese and milk powder for which the price to be paid to producers under regulations promulgated by the Government of Canada was, on April 1, 1971, established at \$3.85 per cwt.

The Board, therefore, will issue its order increasing the minimum price to be paid to producers for No. 2 Milk from \$3.60 per cwt. to \$3.85 per cwt. effective July 1, 1971.

DATED AT EDMONTON, in the Province of Alberta, this
Twenty-ninth day of June, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. NOBBS

CHAIRMAN

Certified a true copy.

Secretary



IN THE MATTER OF "The Municipal Government Act":

AND IN THE MATTER OF an application by the City of Camrose to the Public Utilities Board for a determination of the amount which should be deducted for customer contributions and construction advances from the value of \$1,250,000 fixed by the Board as being the value of a water system owned by Calgary Power Ltd. in the City of Camrose:

APPEARANCES:

A. O. Ackroyd, Esq., Q.C.	:	For the City of Camrose
J. G. Matkin, Esq.	:	
J. H. Laycraft, Esq., Q.C.	:	For Calgary Power Ltd.

D E C I S I O N

This application arises from a previous application made by the City of Camrose (hereinafter referred to as "the City") for the consent of the Board permitting the City to purchase the rights, apparatus and property of Calgary Power Ltd. (hereinafter referred to as "C.P.") on the termination of a franchise agreement between the parties having reference to a water supply for the City.

The first application was heard by the Board in April and June, 1970 and on December 11, 1970 the Board issued its Decision No. 30087 on that application. In that decision the Board determined the value of the water system as at December 31, 1968 and fixed the amount at \$1,250,000 "subject, however, to such deduction for customer contributions and construction advances as may be found applicable".

The application now before the Board is made by the City seeking a determination of the amount of these customer contributions and construction advances.

During the hearing of the application which resulted in the Board issuing Decision No. 30087, fifty-four exhibits were filed. Following the hearing the City filed a report

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dated July 13, 1970 prepared by Strong, Lamb & Nelson Ltd. and entitled "Valuation of Work Orders of Calgary Power Ltd. to which customers have made contributions and advances as per 'exhibits 48, 50, 51 and 52'". This report, as a matter of convenience, has been designated Exhibit 55.

In the present proceedings six exhibits were filed, being entered as Exhibits 56 to 61 inclusive.

* * * * *

At page 29 of Decision No. 30087 and continuing to page 34, the Board outlined the nature of customer contributions and also referred to clause 16 of the agreement entered into between the City, pursuant to By-law No. 737, and C.P., being a franchise agreement dated June 3, 1958, which the City did not renew on the termination of the agreement at the end of the ten-year term under which it was to run.

Since rendering its Decision No. 30087 the Board now has the advantage of having heard evidence and argument of counsel as to the nature of and the manner of accounting for contributions which have been made to C.P. which is more comprehensive than appeared during the first hearing. In Decision No. 30087 the Board said:

"The City, if it decides to exercise its rights to acquire the system, must apply to the Board for the necessary approval. At that time the parties will have an opportunity to submit evidence as to what amount should be deducted from the price which the City must pay for contributions made by customers having regard to the refunds which C.P. is required to make to such customers under the terms of the franchise agreement."

The parties have now had the opportunity to submit evidence as to what amount should be deducted and in addition the Board has had the opportunity to consider further argument of counsel relating to such deductions.

With respect to the franchise agreement entered into between the parties, there are two clauses which must be considered in determining the position of those customers of C.P.



- 3 -

who have made contributions toward the cost of the water extensions necessary to provide them with service. The first is clause 2 which has reference to "Definitions" and which reads:

" The term 'inhabitants' where used throughout this Agreement shall be construed as meaning and including persons, firms and bodies corporate. 'Consumer' or 'customer' shall mean any person, firm or corporation that is a consumer or customer of the Company in respect of a supply of water hereunder, including the City. 'City' shall mean the city as at present constituted or as its limits may be extended from time to time."

The second is clause 16 which refers to "Extension of Mains", and which reads:

" The City covenants with the Company that it will not call upon or require the Company to change or alter its distribution system or undertaking as the same now exists during the term of this Agreement, IT BEING UNDERSTOOD AND AGREED that the Company shall only be required to extend its distribution system provided:

- (a) a customer or customers has agreed to install a water service from the property line to the customer's premises and to take and pay for a supply of water for three years or more; and
- (b) the length of the required extension does not exceed One Hundred and Forty (140) feet per customer; and
- (c) a customer, or customers, has paid the construction costs in excess of One Hundred and Fifty dollars per customer on the basis of 4" diameter pipe. (The size of the pipe shall be in the sole discretion of the Company).

For the purposes of computing customer contributions, a water main extension shall be considered of two parts:

- (1) that part of the extension within a city block or portion thereof and passing the frontage of the lots measured from the centre of street intersections, hereinafter termed 'frontage extension'; and
- (2) that part of the extension not covered by the term 'frontage extension', hereinafter termed 'side street extension'.

As side street extensions have, or may have, value to more than one frontage extension, the Company will

"assume full cost of side street extensions, reserving Fifty (\$50.00) Dollars per customer of its investment of One Hundred and Fifty Dollars per consumer in water main extensions for that purpose.

Customer contributions shall be refundable when other customers take service from a frontage extension to which contributions have been made, it being understood and agreed that:

- (a) No refunds shall be made to a customer until the average of the then required customer contributions on a given frontage extension is less than the amount of that customer's contribution.

Also, no customer having already contributed shall be asked for further contributions respecting that frontage extension or continuation thereof; and

- (b) No new customer will receive service from an existing frontage extension at less cost than those who have already contributed to that frontage extension. "

The Board, in fixing the price to be paid to C.P. at the termination of the franchise agreement, must have regard to section 272 of The Municipal Government Act, chapter 246, R.S.A. 1970 (prior to March 1, 1971 being section 271, chapter 68, S.A. 1968). Section 272 reads:

" 272. (1) Application for the approval by the Public Utilities Board of any special franchise or other contract entered into pursuant to section 271 or pursuant to a municipal charter, or any renewal thereof as hereinafter provided, shall be made to the Board prior to or forthwith after the first reading of the by-law.

(2) Any such contract, whether or not it contains an express provision to that effect, is subject to the following conditions, namely,

- (a) that at or before the expiration of the term thereof, and after the expiration of the term if the contract has been continued in force under subsection (3), the contract may be renewed for a period not exceeding 10 years from the date of the renewal and so on from time to time with such alterations, if any, as may be agreed upon by the parties and approved by the Public Utilities Board, and
- (b) that, if either party refuses to renew the contract, or if the parties fail to agree as to the conditions of the renewal, then the council, subject to the consent of the Public Utilities Board, may purchase all the rights of the con-

" contractor in all matters and things under the contract and in all apparatus and property used for the purposes thereof, for such price and on such terms as may be agreed upon with the contractor in all matters and things under the contract and in all apparatus and property used for the purposes thereof, for such price and on such terms as may be agreed upon with the contractor, or failing such agreement, then for such price and on such terms as may be fixed and settled by the Public Utilities Board on the application of either of the parties.

(3) If any such contract is not renewed on or before the expiration of the original term, or of any renewal thereof, by express agreement of the parties as aforesaid, or if the council does not complete the purchase of the subject matter thereof as hereinbefore provided, then the contract continues in full force and effect until such time as either party terminates it on six months' written notice given to the other with the approval of the Public Utilities Board.

(4) When pursuant to this or any other Act, an area is or has been heretofore incorporated as, or annexed to, or included in a municipality, a special franchise with respect to the area, or a contract for the supply of light, power, natural gas or water to persons resident in the area, that has been conferred or entered into by the governing authority previously having jurisdiction in the area and that has become operative therein shall be deemed to have been conferred or entered into on its original date by the council of the new municipality and to have become operative therein and section 271 and this section apply, the necessary changes being made, to the special franchise or contract."

The Board, therefore, in fixing the price must have regard to the rights of C.P. in,

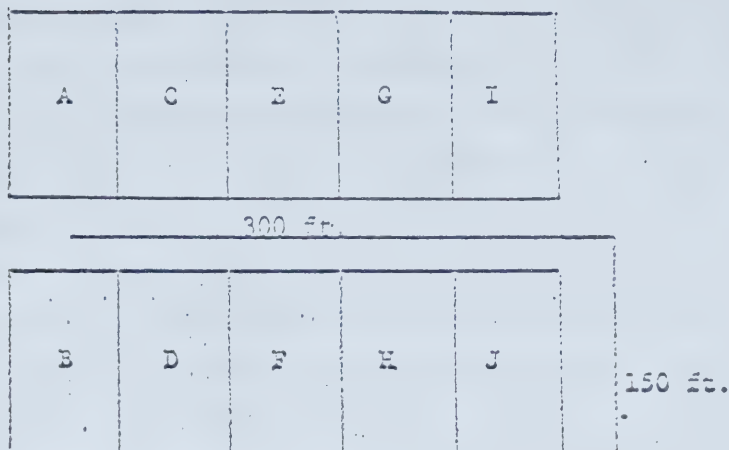
- (a) all matters and things under the contract
and
- (b) in all apparatus and property used for the
purposes thereof.

It is necessary, therefore, that the Board examine the rights of C.P. under the franchise agreement as they relate to contributions required to be made by customers pursuant to clause 16 of such agreement. Under clause 16 C.P. is only required to extend its distribution system if the customer to be served has agreed to install a water service and to take and pay for a supply of water for at least three years and, in addition, the customer has paid a proportionate amount of the

cost of constructing the extension in the amount provided for under clause 16.

C.P., therefore, has the right, as a condition of extending service, to require a customer, under the circumstances contemplated in clause 16, to make a contribution to meet the cost of providing the facilities necessary to provide service. On the other hand, with this right C.P., upon receiving the contribution from a customer, undertakes to make refunds of a proportionate amount of such contributions if service is supplied to additional customers from the same extension. The basis upon which refunds are to be made are set out under clause 16.

Briefly, where the construction of an extension is necessary in order to provide service, C.P. agrees to bear the cost of such extension to the extent of \$150 per customer being served therefrom with the customer or customers providing the remainder of such cost (cost, for the purpose of calculating the customer contribution, is based on the cost of 4" pipe); provided, however, that that part of such cost which consists of side street extension, shall be borne by C.P. with \$50 of the per customer cost of \$150 provided by C.P. being considered as applicable to the side street extension cost. This has the effect of the customers bearing the frontage cost of 4" pipe required for that purpose less \$100 per customer which is borne by C.P. To illustrate the manner in which this arrangement operates C.P. tendered Exhibit 60. This exhibit is reproduced below:

CUSTOMER CONTRIBUTION CALCULATIONS

1. Customer on Lot A only:

Cost of frontage	300 ft. x \$3.50/ft.	=	\$1050.00
	Company investment		100.00
	CUSTOMER CONTRIBUTION		\$ 950.00

2. Customers on Lots A and B.

Cost of frontage	300 ft. @ \$3.50/ft.	=	\$1050.00
	Company investment 2 @ \$100.00		200.00
	Customer contributions (2 customers)		\$ 850.00
	or each CUSTOMER CONTRIBUTION		\$425.00

Customer A is then refunded $\$950.00 - \$425.00 = \$525.00$

3. Customers on Lots A, B, and C.

Cost of frontage	300 ft. x \$3.50/ft.	=	\$1050.00
	Company investment 3 @ \$100.00		300.00
	Customer contributions (3 customers)		\$ 750.00
	or each CUSTOMER CONTRIBUTION		\$250.00

Customer A will be further refunded $\$425.00 - \$250.00 = \$175.00$

Customer B will be refunded $\$425.00 - \$250.00 = \$175.00$

NOTE: The full cost of the 150 ft. of side street extension, plus the additional cost of installing frontage main of a larger size than 4", is borne by the Company.

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It will be observed that as additional customers are served from an extension refunds are made to those customers who had made earlier contributions in order that each customer has the same level of contribution. In the example given in Exhibit '60 when ten customers are connected to the extension, which originally cost \$1,050, C.P. would have provided \$1,000 with the ten customers each contributing \$5.00. If an eleventh customer is added C.P. would then bear the full cost (11 x \$100) and a refund of the \$5.00 contribution made by each of the ten customers previously connected would be made to each of them. Whether the entire amount contributed by customers will be refunded to them depends upon:

- (a) sufficient services being connected to an extension which, when multiplied by \$100, will equal or exceed the cost of such extension;
- (b) the physical limitations of the number of services which can be provided from any extension in relation to the cost of such extension calculated on a 4" pipe basis.

If, for example, a frontage extension is capable of furnishing services to thirty dwellings and such extension, because of increasing prices has a current cost of \$3,600, the maximum amount which C.P. would bear would be $30 \times \$100 = \$3,000$. The thirty customers, when all are connected would, therefore, have to continue to bear the remainder of the cost of \$600 on the basis of \$20 each. These contributions would only be refunded if it became physically possible to connect an additional six customers to the extension.

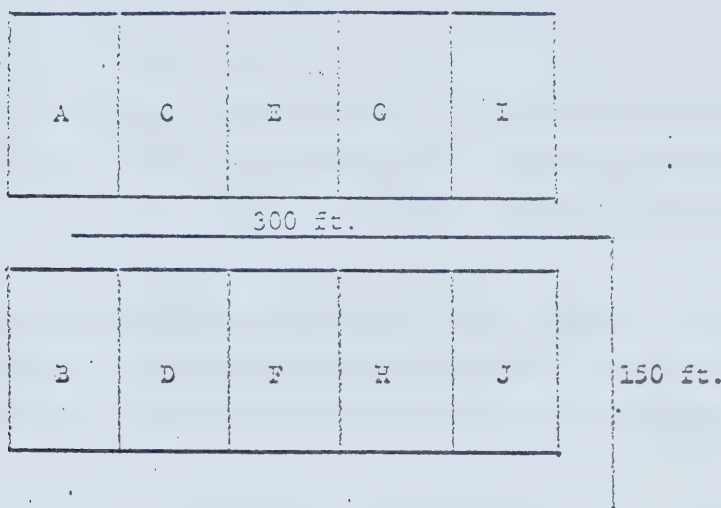
* * * * *

In addition to the contributions made by customers C.P. has also entered into contracts with developers, which includes the City. The evidence is that the developers are required to meet the full cost of installing the frontage extensions on a 4" pipe basis in any new subdivision which they develop. As houses constructed in the subdivisions become occupied, and the in-



habitants obtain water service, refunds are made to the developers of that part of the cost which they have borne, which is related to frontage extensions, at a rate of \$100 for each service connected and served. The manner in which this arrangement is carried out is illustrated by C.P. in Exhibit 61 which it tendered and which is reproduced below:

CONSTRUCTION ADVANCE CALCULATIONS



1. No customers on any lots.

Cost of frontage	300 ft. @ \$3.50/ft.	= \$1050.00
Company investment (no customers)		nil
	CONSTRUCTION ADVANCE	\$1050.00

Of this amount 10 lots @ \$100.00 = \$1000.00 is refundable.

2. Customer on Lot A only.

Original CONSTRUCTION ADVANCE		\$1050.00
Company investment (1 service @ \$100.00)		100.00
	New CONSTRUCTION ADVANCE	\$ 950.00

The Company meets its requirement to invest \$100.00 by refunding, when the customer is connected, this amount of the original ADVANCE.

3. Customers on all 10 lots.

Original CONSTRUCTION ADVANCE		\$1050.00
Company investment (10 services @ \$100.00)		\$1000.00
	Remaining CONSTRUCTION ADVANCE	\$ 50.00

At this point the Company's contractual obligation with respect to the CONSTRUCTION ADVANCE originally paid to it has been completed. The remaining \$50.00 becomes a CUSTOMER CONTRIBUTION, refundable at \$5.00 to each of the 10 customers, only if another service were connected from the piece of main in question.

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Exhibit 58 indicates that of the construction advances provided by land developers at December 31, 1968, \$23,732.25 was subject to being refunded and \$36,112.14 was non-refundable. The exhibit also indicates that on that date customer contributions amounted to \$35,793.92, which amount, together with the "non-refundable" portion of construction advances referred to in Exhibit 58, aggregates \$71,906.06.

* * * * *

The City argues that the \$71,000 will never be refunded by C.P. and suggests it is a portion of capital outlay for the purchase of the distribution system that should be deducted from the final price of the system.

Cases are cited as supporting this proposition, among which is re Village of Mount Horeb (1936) 14 PUR (NS) 181 and D.P.W. Washington v. Oregon-Washington Service Company (1938) 8 PUR (NS) 293.

C.P. takes the position that a difference exists between customer advances and customer contributions, advances being under separate contractual arrangements having nothing specifically to do with the franchise agreement, the arrangements being entered into respecting advances between C.P. and land developers. This being so, it is argued, the rights of the parties under such contractual arrangements are subject, not to the jurisdiction of this Board, but to the jurisdiction of some other tribunal.

It is further argued by C.P. that customer contributions constitute a stream of revenue where the revenue from facilities installed is not sufficient to provide an adequate level of revenue, and as such, being a revenue item and not a capital item, cannot be considered by the Board under the type of application now before it. The Board is referred by C.P. to an opinion expressed by Parker J. of the Circuit Court in and for Dade County, Florida, dated February 16, 1971, which at this date is unreported. This case has reference to an interlocutory proceeding having reference to an eminent domain proceeding in the State of Florida on a question as to whether

or not the County had the right to acquire utility property without liability for payment of compensation to recompense the owners for any property acquired as contributions in aid of construction. After reviewing cases in the United States and referring to the constitutional rights of owners in the State of Florida, the Court held that such contributions were not deductible.

The Horeb case, referred to by the City, was an application before the Wisconsin Public Service Commission which held that utility contributions should, in determining the price of utility property taken over by a municipal authority, be deducted in determining compensation. The Washington case referred to by the City has reference to a rate proceeding in which property was being valued for the purpose of fixing rates.

The Board has reviewed these cases as well as those cited or referred to by C.P. and has come to the conclusion that the statutory conditions under which the conclusions were reached by the authorities cited were such that little assistance is provided in making the determination required to be made by the Board under The Municipal Government Act and the franchise agreement entered into between the City and C.P.

To bring this matter into perspective it may be useful to repeat what the Board said in Decision No. 30087. At page 31, referring generally to customer contributions, the Board said:

"'Customer contributions' is a term common to public utility parlance and has reference to the amounts required to be paid to the utility by a customer in situations where investment in capital facilities to provide utility service to such customer is greater than the economic feasibility of providing such service warrants. Counsel for C.P., in his argument, expresses very aptly the reasons for and the manner in which the contributions are used in the matter of designing rates. He says:

' Customer contributions, on the other hand, are more closely related to the franchise. Those contributions represent dollars of investment which cannot be supported by the rates charged for water. When a franchise is signed it sets out the standard rates to be charged, and also provides for adjustments when the capital investment is greater than would be supported by the rates. Under these conditions a customer contribution is obtained rather than to impose a higher rate on a particular customer. As a

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" 'result, the utility has two streams of revenue, one in the form of monthly billings and the other in the form of a customer contribution. From these earnings the utility pays the operating expenses, taxes and return of and on the capital investment.'

Were it not for the contributions made by customers the utility would not be prepared to instal the facilities to provide service. In essence, what the customer is doing is making a lump sum payment at the time the service is first provided to him to meet the yearly deficiencies in the level of earnings which the utility is entitled to under its rate structure which would result if a utility was required to make the extension regardless of the capital cost involved. There is, therefore, a relationship, not between the City and C.P., but between C.P. and its customers wherein in return for receiving service at the standard rates offered by C.P. in Camrose, the customer makes a payment of a sum of money to C.P. which is used to meet that part of the cost of the service facilities that lay outside economic bounds. Title to the facilities, part of the cost of which has been provided by the customer, vests in C.P.

Provision is made in the franchise agreement that when additional customers are added to such an extension they also will be required to make a contribution in accordance with the terms of the franchise agreement whereupon C.P. will, in the manner outlined in the agreement, make refunds of part of the contributions made by customers earlier served.

It follows from this that in the event the system is acquired by the City it is necessary that consideration be given to the position of those customers who have made contributions to meet the deficiency in annual returns to C.P. in order to obtain service at the rates provided for under the franchise agreement.

From a rate regulatory point of view, which counsel for C.P. contends is not relevant to these proceedings, the contributions are deducted from the rate base of the utility in determining the return to which it is entitled. This is because the utility is not entitled to a return on capital assets which in fact it has not had to pay for notwithstanding that such assets are the property of the utility. In passing it should be pointed out that it is usual in rate proceedings to deduct the total of such accumulated contributions from the rate base. Probably a more logical method would be to assign to each year some portion of the contributions made, on an amortization basis, to the revenue of the utility which would consist of the stream of revenue from customer contributions to which counsel for C.P. refers."

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In the Board's view it must look to the provisions of the franchise agreement for the purpose of determining from whom C.P., under the agreement, is entitled to request contributions. Clause 16 sets out the conditions which must exist before the City is in a position to request C.P. to extend its distribution system. The conditions are:

- (a) A customer/s has agreed to install a water service line on his property and to take and pay for a supply of water for three years or more.
- (b) The extension required does not exceed 140' per customer.
- (c) A customer/s has paid the construction costs on the basis of 4" diameter pipe in excess of \$150.00 per customer, C.P. assuming the full cost of constructing the side street extensions but reserving out of the \$150.00, hereinbefore referred to, \$50.00 thereof of its investment toward the cost of the side street extension.

The term "customer" is defined in clause 2 of the agreement to mean "any person, firm or corporation that is a consumer or customer of the Company in respect of a supply of water hereunder, including the City".

This can only mean that a "customer", as used in clause 16, can only refer to such person who, as soon as the extension is constructed and connected, is a consumer of water. This appears to be the reason why C.P. found it necessary to enter into separate agreements with land developers which provided for the construction of the extensions before customers were available to take a supply of water from the extension upon the completion of the construction thereof. This being so, the Board agrees with the argument of C.P. that the agreements which have been entered into by C.P. and the developers, which includes the City when engaged in land development, are beyond the scope of the Board's determination in these proceedings.

It now becomes necessary to consider the purpose and use of the contributions made by those customers of C.P. who, before

they could obtain a supply of water from C.P., were required to make contributions in the manner provided for under clause 16 of the franchise agreement. The Board, as indicated earlier, has now had the opportunity to review the additional evidence submitted and the supplementary argument of counsel. It now becomes apparent that under clause 16 the contributions made by the customers do not meet the entire cost of the extension. The evidence now is that the contributions are measured as being the cost of installing 4" diameter pipe along the street fronting on the customers' property less an amount of \$100.00 for each customer served from such frontage extension. C.P. bears any additional cost occasioned by the pipe required for the extension being in excess of 4" in diameter plus the amount of \$100.00 per customer, as hereinbefore referred to. In addition, C.P. bears the full cost of the side street extension necessary to provide service.

The Board, in Decision 30087, observed that if the price of the system included the value of those assets for which customers had made contributions without such value being deducted from the price inequities would occur. The Board, however, added this observation: "subject to the parties having the opportunity to submit evidence as to what amount should be deducted from the price which the City must pay".

The parties have now had the opportunity to furnish such evidence and argument in this regard. The Board is satisfied that on the basis of the evidence now before it the contributions made by customers was for the purpose of providing the funds necessary to meet the deficiency in earnings which would result from the construction of an extension which, at the rates prevailing under the franchise agreement, provided insufficient revenue to meet the cost of supplying water to such customers. Expressed another way, the necessity of requiring a contribution from a customer is for the purpose of maintaining the economic feasibility of the service extension at the rates currently prevailing at that time, the customer providing the funds, on a prepaid basis, to meet the deficiency in revenue produced by the general rate applicable in the City. The alternatives to such



an arrangement are either the customer for whom the extension is being made would have to be charged abnormally higher rates in order to meet the cost of providing the service, or the rates generally applicable in the City would have to be raised. In the latter event all customers would be called upon to provide the additional revenue necessary to maintain the earnings of the utility at an adequate level. This basis is supported under the arrangement entered into whereby, under clause 16, as additional customers are added to an extension, thereby providing additional revenue, refunds are made pro rata to customers previously connected. That such refunds are associated with capital cost rather than revenue appears to have been an arrangement entered into between C.P. and the City as a convenient means of determining the basis upon which the refunds were to be made and does not, in the Board's view, alter the necessity for obtaining contributions to meet revenue deficiencies.

The proceeding before the Board is for the purpose of determining the value of the facilities owned by C.P. which the City wishes to acquire. The Board has no duty to ascertain whether C.P. earned or did not earn a reasonable return during the period which it had the franchise to supply water to the inhabitants of the City. As was said by the Privy Council in *International Railway Company v. Niagara Parks Commission* (1937) 3 D.L.R. 305:

" It is a familiar feature common to all cases in which a franchise for a public utility is granted to private undertakers for a limited period, coupled with an obligation to transfer the undertaking to a public authority at the conclusion of the period, that the undertakers must look to reap the reward of their enterprise in the profit which they may make during the currency of their franchise and on its expiry shall receive only the value of the structure which they have created without any compensation either for the profits or the losses which they may have made or sustained while in the enjoyment of their franchise."

In a similar proceeding before the Board in re *The City of Grande Prairie v. Northland Utilities Limited*, Decision 27014,

affirmed on appeal to the Appellate Division (1966) 56 W.W.R. 613, the Board, dealing with the question of depreciation recorded on the books of the Company, said:

"..... This board has no duty in the circumstances to see that the proposed purchaser makes a reasonable return on the money which he might invest. The city is not compelled to purchase but may do so at its option and it is for the city to decide the economic feasibility of such purchase. No duplication of payment is involved for regardless of what depreciation may be entered in the books of the company it cannot be said that the consumers paid it when the company did not earn a reasonable return any more than it can be said that the company paid it when the return is not reasonable."

The Board, on the basis of the evidence and after considering the argument of counsel, has come to the conclusion that no amount should be deducted from the amount of \$1,250,000 fixed by the Board in Decision 30087 as being the value as at December 31, 1968 of the Camrose water system owned by C.P.

The Board observes, however, that C.P. should be amortizing customer contributions on some rational basis and the unamortized balance of contributions at any particular time would represent an obligation of the company to customers that will be satisfied by the rendering of service in the future. Should C.P. not have to fulfill such an obligation, if the system is acquired by the City, then it appears that the unamortized balance of customer contributions should be refunded to the customers. In this way the customers will have paid a proportionate amount of the contribution to C.P. for service rendered and should be able to enter into a mutually agreeable arrangement with the City as to the amount of contribution necessary for future service.

DATED AT EDMONTON, in the Province of Alberta, this Twentieth day of July, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. NOBBS

CHAIRMAN

(SIGNED) W. D. ABERCROMBIE

MEMBER

Secretary

fied a true copy.

NO. 30287



File: P.U. 7550-5 (1)

IN THE MATTER OF "The Gas Utilities
Act": and

IN THE MATTER OF "The Public Utilities
Board Act": and

IN THE MATTER OF an application by
Plains-Western Gas & Electric Co. Ltd.,
for an increase in the rate to be
charged to its customer William Davies.

APPEARANCES:

W. N. Richards, Esq.,	:	for Plains-Western Gas &
	:	Electric Co. Ltd.,
	:	
L. D. Wilkins, Esq.,	:	for William Davies.

D E C I S I O N

On November 12, 1970, Plains-Western Gas & Electric Co. Ltd., (hereinafter referred to as "Plains-Western") made an application to the Public Utilities Board to:

1. Fix and approve a just and reasonable rate, toll or charge with regard to natural gas supplied to or to be supplied to William Davies;
2. Determine a rate base for the property that is used or required to be used for service to William Davies and fix a fair return thereon;
3. Fix and determine a just and reasonable rate, toll or charge for natural gas supplied to William Davies for the period November 1, 1969 to November 12, 1970.

The application came on for hearing and was heard at the Court House, in the City of Medicine Hat on Tuesday, March 30, 1971.

The circumstances are that on September 17, 1963 Delta Gas & Transmission Ltd., (hereinafter referred to as "Delta") entered into a letter agreement with William Davies for a supply of natural gas from their Delta MedHat 7-25-14-5 well for his own use on his farm installation in Section 26,

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Township 14, Range 5, West of the Fourth Meridian, in the Province of Alberta. The executed letter agreement for the supply of gas to William Davies is as follows:

"Mr. William Davies,
P.O. Box 712,
Medicine Hat, Alberta.

Re: Your Proposed Purchase of Natural Gas
from our Delta MedHat 7-25-14-5 Well

Dear Sir:

Further to our conversation, this is to confirm that we will sell natural gas from the aforementioned well to you for your own use on your farm installation in Section 26, Township 14, Range 5, subject to the following:

- (a) That you shall at your own risk, cost and expense, purchase, lay and maintain your own transmission line and fittings to our delivery point twenty feet from well casing valve of the above mentioned well.
- (b) Said transmission line to be laid according to specifications and regulations, if any, of the Oil and Gas Conservation Board of Alberta, Gas Inspection Branch, Pipeline Department of Alberta.
- (c) To obtain your own right-of-way for said transmission line and to be responsible for any damage, if any, which may be caused to land of the said right-of-way all at your own expense.
- (d) To equip said transmission line with proper regulators to maintain safe and low delivery pressure at your pump site and to maintain same in good working order at your own cost and expense.
- (e) In the event the well has to be serviced or re-worked, you shall be given eight hours notice, and upon such notification you shall agree to take adequate precautions to shut off all outlets in your own line to prevent all hazards during such rework operations.
- (f) That you shall agree to pay Delta Gas & Transmission Ltd., its assigns, or agents a fixed wellhead flat price of Seven Cents (07¢) per thousand cubic feet (MCF). All gas used by you shall be metered through a rotary meter supplied by you at your expense and installed by Delta Gas & Transmission Ltd. Gas for your use in excess of one million cubic feet in each month shall be charged to you at the rate of Six Cents (6¢) per each thousand cubic feet, payable monthly, within ten days of invoice commencing thirty days from date of first delivery.

- "(g) That you shall agree that in the event the aforementioned well shall be abandoned or reworked, you shall not apply for any compensation or for any loss you may suffer as a result of such event and that Delta Gas & Transmission Ltd., its agents or assigns shall not in any way be held responsible for any such loss, and that you shall agree to save Delta Gas & Transmission Ltd., its agents or assigns harmless from taxes, liens or claims which may be levied against you as a result of obtaining gas from the aforementioned well. It further being agreed herein that in the event Delta Gas & Transmission Ltd. shall at any time cease to produce the aforementioned well you or your assigns shall not be entitled to obtain gas from any other well or wells owned or operated by Delta Gas & Transmission Ltd. as compensation for any loss you may suffer as a result of any such action by Delta Gas & Transmission Ltd.
- (h) That you shall agree that you shall not take delivery of more than one million cubic feet in any one calendar month within the aforementioned monthly flat rate price structures or in event that your requirements are in excess of one million cubic feet in any calendar month, you shall agree to pay for such excess gas at the rate of Six Cents (6¢) per thousand cubic feet of gas, said payment to be made together with the next following monthly flat rate payment.
- (i) That you shall agree that at no time shall you take delivery of natural gas as aforesaid for resale.
- (j) All notices to be directed by registered mail to your self at the above address and to Delta Gas & Transmission Ltd. at 208 - 224 Ninth Avenue S.W., Calgary, Alberta.

SUBJECT to the foregoing, and your signed acceptance thereof, you are hereby granted authority to proceed with your plans to construct your delivery system upon receipt by Delta Gas & Transmission Ltd. of all written permits from the agencies named in paragraph (b) hereof.

Please hand three executed copies of this instrument to our agent.

Yours truly,

DELTA GAS & TRANSMISSION LTD.

(SIGNED) J. E. CLEVELAND

J. E. Cleveland
President

Accepted and agreed this 17 day of Sept., 1963.

(SIGNED) W.V. HUGHES

(SIGNED) WILLIAM DAVIES

Witness

WILLIAM DAVIS "

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On March 31, 1965, Delta entered into an agreement with Pembina Pipe Line Ltd., (hereinafter referred to as "Pembina") transferring the William Davies agreement to Pembina together with four other agreements for the supply of gas to individuals. Subsequently, under an agreement dated May 1, 1969, Pembina reassigned the Delta-William Davies agreement of 1963 to Plains-Western, together with thirty other agreements and contracts for the supply of gas to individuals.

On the same day, May 1, 1969, that Plains-Western obtained the Delta-William Davies agreement, Plains-Western entered into an agreement with Pembina and Midcon Oil & Gas Limited (hereinafter referred to as the "sellers") for a supply of gas at various delivery points on sellers' pipe line system. Schedule "A" to the agreement sets out thirty eight delivery points and item 20 thereon shows the following location:

"South East (SE $\frac{1}{4}$) Quarter of Section 25, Township 14, Range 5, W4M. (Mr. W. Davis - Contract - 100.003)"

Under the terms of the agreement sellers receive 22¢ per Mcf for the gas supplied to Plains-Western whereas under the terms of the Delta-William Davies agreement Plains-Western sells the same gas to Davies at 7¢ per Mcf for the first 1000 Mcf per month and at 6¢ per Mcf for all gas in excess of 1000 Mcf per month. It is this disparity between the selling price and the purchase price which has prompted Plains-Western to apply to the Board for an increase in the rate charged William Davies for gas sold to him.

Section 16 of The Gas Utilities Act, Chapter 158, Revised Statutes of Alberta, authorizes the Board to change the agreed rate specified in any gas supply contract

between an owner of a gas utility and any person when it is shown that the rate is insufficient, excessive, unjust or unreasonable. Section 16 reads:

"16. Where by any contract between an owner of a gas utility and any municipality or person for the supply of any gas by means of the gas utility, any rate, toll or charge is agreed upon either as a fixed or variable rate, toll, or charge, or a maximum or minimum rate, toll or charge, and whether such rate, toll or charge is agreed upon with respect to a present or future supply of gas, then, notwithstanding any other provision of this Act or The Public Utilities Board Act, the Board may, upon the application of the owner, municipality, or person and upon it being shown on the hearing of the application that the rate, toll or charge is insufficient, excessive, unjust or unreasonable, change the rate, toll or charge to such other greater or lesser rate, toll or charge, as it deems fair and reasonable."

Plains-Western in making application to the Board to vary the agreed rate in the Delta-William Davies agreement contends that it is "a Public Utility supplying gas to consumers within the Province of Alberta." This Board is well aware that Plains-Western is normally considered an owner of a gas utility but to determine if this is in fact the case in its relationship with William Davies the Board must have reference to those sections of The Gas Utilities Act which define "gas utility" and "owner of a gas utility." The sections are as follows:

"2.(f) 'gas utility' means

- (i) any gas pipe line,
- (ii) any system, works, plant, pipes, equipment or service for the production, gathering, conveying, transmission, transporting, delivery, furnishing or supplying of gas by retail or wholesale, either directly or indirectly, to or for the public or any member of the public, whether an individual or a corporation, other than the transportation, delivery, furnishing or supplying by retail or wholesale, either directly or indirectly, of liquefied petroleum gas by means of tank car, tank wagon, cylinder or vessel,

- " (iii) any scrubbing plant, and
- (iv) any system, well, works, plant, equipment or service for the production of gas or capable of producing gas which may be declared by the Energy Resources Conservation Board to be a gas utility;

2. (i) 'owner of a gas utility' means

- (i) a person owning, operating, managing or controlling a gas utility and whose business and operations are subject to the legislative authority of the Province, and the lessees, trustees, liquidators thereof or any receivers thereof appointed by any court, but
- (ii) does not include a municipality that has not voluntarily come under this Act in the manner provided by section 5; "

At the hearing Plains-Western amended its application by deleting its request to the Board to determine a rate base for the property that is used or required to be used for service to William Davies because Schedule II of Exhibit #6 (Plains-Western cost study submission) has a notation as follows:

" No direct investment by Plains-Western Gas & Electric Co. Ltd., in providing gas service to William Davies."

Under the Delta-William Davies agreement Davies takes delivery of the gas twenty feet from the well casing valve. All costs for the transmission line, fittings, regulators, meter and right-of-way for the transmission line were paid by Davies and these facilities are owned by him. Plains-Western does not own the gas well, nor the facilities to transmit the gas twenty feet from the wellhead to the delivery point, all are apparently owned by Pembina who acquired them from Delta under a sale agreement dated February 17, 1965 and approved by the Board on March 31, 1965, Order No. 26957. The evidence is that the only

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property which Plains-Western acquired from Pembina relating to gas service to Davies was the assignment by Pembina of the Delta-Davies agreement. It appears to the Board that while Plains-Western is the assignee of the Delta-William Davies agreement it cannot avail itself of the status "an owner of a gas utility" as defined in The Gas Utilities Act when in fact it has not provided any facilities to provide gas service to Davies which would class it as a "gas utility" as defined in the Act.

On the basis of the evidence the Board has come to the conclusion that Plains-Western, in its dealings with Davies, is not the owner of a gas utility within the meaning of The Gas Utilities Act and accordingly the Board, in these circumstances, lacks the jurisdiction to vary the rates from those provided under the agreement.

Plains-Western will pay to William Davies the costs of the hearing in an amount to be agreed upon between the parties, failing which agreement to be fixed by the Board.

DATED AT EDMONTON, in the Province of Alberta, this
21st day of July , 1971.

PUBLIC UTILITIES BOARD,

(SIGNED) W. D. ABERCROMBIE

MEMBER

(SIGNED) H. A. WILLIAMS

Certified a true copy,

ACTING MEMBER.

Secretary.

NO. 30294



Files: P.U.7794-MC-1(1), 2(1),
3(1), 4(1), 5(1), 6(1),
8(1), 9(1) & 10(1)

IN THE MATTER OF "The Milk Control
Act" :

AND IN THE MATTER OF "The Public
Utilities Board Act":

AND IN THE MATTER OF applications
to the Public Utilities Board by
the licensed producers and distribu-
tors in the controlled areas in
Alberta for an increase in the retail
and wholesale minimum prices of milk
processed and sold:

APPEARANCES:

W. K. Moore, Esq., Q.C.	:	For Union Milk, Division of
	:	Silverwood Dairies Limited;
	:	Purity Dairy Co-op Ltd.;
	:	Alpha Milk Co., Division of
	:	Central Alberta Dairy Pool;
	:	Palm Dairies Limited.
	:	
A. B. Wells, Esq.	:	For Pass Dairy Ltd.
	:	
D. H. Bowen, Esq., Q.C.	:	For Silverwood Dairies Limited;
	:	Palm Dairies Ltd.;
	:	Northern Alberta Dairy Pool
	:	Limited;
	:	Purity Dairy Co-op Ltd.;
	:	Ness Dairy.
	:	
K. A. Johnstone, Esq.	:	For Central Alberta Dairy Pool,
	:	Ponoka
	:	
F. R. McCalla, Esq.	:	For Alberta Milk Producers
	:	Association.
	:	
H. Fielding, Esq.	:	For the City of Red Deer
	:	
A. M. Brownlee, Esq., Q.C.	:	For The Alberta Brotherhood of
	:	Dairy Employees and Driver
	:	Salesmen.

D E C I S I O N

Applications have been made by the licensed processors
and distributors of milk in the controlled areas throughout
Alberta for an increase in the minimum retail and wholesale
minimum prices of milk products processed within and sold

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within and outside the controlled areas in the Province of Alberta. The controlled areas for which applications have been received are: Calgary, Camrose, Crowsnest Pass, Edmonton, Lethbridge, Medicine Hat and Ponoka.

The Alberta Milk Producers Association informed the Board at the hearings that it was not their intention at this time to seek an increase in the minimum price to be paid to the licensed producers by the processors of milk in the various controlled areas.

Hearings were held by the Board during the months of April and May, 1971 at the Cities of Medicine Hat, Lethbridge, Calgary, Red Deer, Edmonton and Camrose, and in the Town of Ponoka. In addition to the parties represented at the hearings submissions were also made by:

T. Sweeting, representing Driver, Salesmen,
Plant, Warehouse and Cannery Employees,
Local Union No. 987 of Alberta;

Mrs. V. Swan - on her own behalf as a
consumer;

Mrs. P. Brock and Mrs. Doris Walters -
representing the Consumers Association
of Canada;

G. Mah Poy - a resident of Ponoka, on his
own behalf as a consumer.

The Board last heard an application of this nature in 1970 at which time, in addition to the processors and distributors in the various controlled areas, the milk producers in those areas also applied for an increase in the minimum price received by them for milk produced by them and used for the purpose of supplying fluid milk to the consumer.

In 1970 increases in the minimum prices for milk were authorized by the Board following upon the issuance of its Decision No. 29892, dated June 25, 1970.

* * * * *

The production, processing and sale of fluid milk in specified areas of the Province, designated by regulation as

"controlled areas", is subject to the jurisdiction of the Alberta Milk Control Board constituted under The Milk Control Act, chapter 237, Revised Statutes of Alberta 1970. The matter of prescribing the minimum prices to be paid to the producers of milk and the minimum wholesale and retail prices of milk is, however, a jurisdiction vested in the Public Utilities Board pursuant to section 12 of The Milk Control Act which provides as follows:

" 12. (1) Notwithstanding anything in this Act, the Public Utilities Board may prescribe for milk the minimum prices

- (a) that are to be paid to producers by processors or distributors,
- (b) that are to be charged by distributors, processors and sellers thereof, and
- (c) that a distributor carrying on business in a controlled area is to charge when furnishing, delivering, keeping for sale or selling milk outside a controlled area.

(2) In prescribing minimum prices for milk, the Public Utilities Board is not bound by any rule of law or public utility practice to see that any rate of return is provided on any plant, equipment or investment.

(3) For the purpose of carrying out its functions under this section, the Public Utilities Board may

- (a) act upon its own initiative or at the written request of either the Milk Board or of one or more persons in the milk business, and
- (b) exercise all the powers it could have exercised in relation to conducting hearings and doing any other act preliminary to the making of a pricing order before the commencement of this section.

(4) Part 1 of The Public Utilities Board Act applies to the Public Utilities Board while it purports to be acting within the jurisdiction conferred upon it by this Act."

The Board, as it has in the past, points out that the prices which it may prescribe are "minimum prices", that is, milk cannot be purchased or sold at prices less than those prescribed by the Board but prices in excess of the minimum prices prescribed may be paid either by the processor to the producer or by the consumer to the distributor of milk. It follows from this, in the Board's view, that any applicant

seeking an increase in the minimum prices prescribed by the Board has the onus of establishing the need for increasing such minimum prices levels.

In its Decision No. 29892, dated June 25, 1970, the Board, after discussing the changes which had taken place in the milk industry as a result of modern refrigeration and transportation methods permitting the ready movement of milk from one area of the Province to another, said:

" In these circumstances, the Board is of the opinion that in the public interest, it should set equal prices throughout the Province, in order to give encouragement to efficient producers and processors and to provide incentive for both segments of the fluid milk industry to pursue more economic and efficient methods of milk production, processing and distribution, which could extend to maintaining to a minimum the variety and sizes of containers in which milk is being offered for sale to the consumer. By this means the Board considers that consumer prices will be maintained at reasonable levels to ensure a high consumption of milk by the public."

The Board considers, therefore, that the applicants, with this admonition, must satisfy the Board beyond any reasonable doubt that a further increase in the minimum prices is warranted at this time.

* * * * *

The witnesses called by the parties were as follows:

W. G. Stephen, a practising Chartered Accountant and a member of the firm of Winspear, Higgins, Stephenson and Doane, Chartered Accountants.

A. B. Wells, a practising Chartered Accountant and a member of the firm of Wells and Fetzko, Chartered Accountants practising at Blairmore, Alberta.

K. A. Johnstone, a Chartered Accountant employed by Central Alberta Dairy Pool.

R. D. Nichols, a milk producer in the Red Deer Controlled Area.

W. J. Astle, a practising Chartered Accountant and a member of the firm of Winspear, Higgins, Stephenson and Doane, Chartered Accountants.

H. Helgren, Secretary-Treasurer of The Alberta Brotherhood of Dairy Employees and Driver Salesmen.

Mr. Stephen testified for the processors and distributors operating in the controlled areas of Medicine Hat, Lethbridge, Calgary and Red Deer. Mr. Wells testified in a similar manner for Pass Dairy Ltd. Mr. Johnstone testified for Alpha Milk Company on the operations carried on by that firm in the Ponoka Controlled Area. Mr. Astle testified for the processors and distributors operating in the controlled areas of Edmonton and Camrose.

* * * * *

The testimony given by the chartered accountants referred to above, who were called as witnesses, had reference to the levels of net income (or losses) which the applicants had sustained in the operation of the fluid milk division of their plant operations. In those areas where the operation results of more than one processing plant were available an exhibit was tendered at each hearing showing the operating results on a combined basis. These exhibits provide particulars of sales and expenses associated therewith on a combined overall basis for all plants operating in the controlled area but do not provide particulars of the operating results of each plant separately. This basis of presentation has been accepted by the Board on applications of this nature on previous applications for the reason that the plants operating in each controlled area are in competition with each other and the owners thereof are reluctant to make available to their competitors particulars of the operations carried on by them which would be available in the individual plant statements on which the combined operating statements had been prepared.

The detailed statements on which the combined statements have been prepared have, however, been tendered by the applicants

at the hearings and entered as "privileged exhibits" on the basis that such information, while not being open to the parties interested, is information nevertheless required by the Board to assist it in making a determination of the minimum prices which should be prescribed for fluid milk products. Such statements, therefore, being filed on that basis are only available for the Board's scrutiny. In those areas where there are an insufficient number of plants to facilitate the preparation of combined statements, individual plant operating statements have been filed at the hearings on the privileged basis referred to above.

* * * * *

Mr. Stephen, in his testimony at Medicine Hat, Lethbridge and Red Deer, pointed out that the Board in 1970 had increased the minimum wholesale and retail price of homogenized and 2% skim milk 1.0¢ per quart and the minimum price paid to the producer increased 0.65¢ per quart which resulted in the processor-distributors having a net minimum price increase of 0.35¢ per quart.

He said the minimum prices which the Board had prescribed in 1970 for the Calgary area represented an increase of the retail and wholesale minimum price of 1.5¢ per quart of which 0.65¢ was paid to the producers, leaving a net increase in the minimum prices available to the processor-distributors of 0.85¢ per quart.

Mr. Stephen said the percentage of net income to sales for each of the years 1967 to 1970 in the four areas in which his testimony was given was as follows:

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Medicine Hat	0.61%	1.90%	1.31%	1.95%
Lethbridge	3.71%	2.97%	0.69%	(0.02%)
Calgary	0.87%	0.55%	0.00%	(0.03%)
Red Deer	(0.83%)	(5.08%)	0.05%	0.52%

() Denotes a loss

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Discussing the sales revenue, expressed in cents per quart, he said that for the years 1969 and 1970 the average price per quart for all milk products sold was:

	<u>1969</u>	<u>1970</u>
Medicine Hat	29.69¢	30.32¢
Lethbridge	30.12¢	30.75¢
Calgary	28.67¢	29.44¢
Red Deer	29.35¢	29.35¢

Referring to processing costs and operating expenses under three categories, being raw milk and ingredients; wages and benefits; other costs and operating expenses; he explained the raw milk and ingredient costs consisted primarily of the cost of raw milk. He said that with the increase in the minimum price to the producers of 0.65¢ per quart and the revision in the formula for milk pay-off under The Milk Control Regulations which became effective February 3, 1970, the costs experienced in the various areas for raw milk and ingredients were as follows:

Medicine Hat - A decline in cost of 0.11¢ per quart
 Lethbridge - An increase in cost of 0.22¢ per quart
 Calgary - An increase in cost of 0.07¢ per quart
 Red Deer - A decline in cost of 0.03¢ per quart.

With respect to the increased costs of wages and benefits, he said that while he had used a rate of 6% in estimating the increased costs at the 1970 hearing, the actual increase, which became effective on May 1, 1970, in collective bargaining negotiations which were not completed until October 1970, amounted to 8.5%. This increase, he said, had the effect of increasing the 1970 wage costs per quart over the 1969 level in the following amounts:

	<u>1969</u>	<u>1970</u>	<u>Percentage Increase</u>
Medicine Hat	8.12¢	8.34¢	2.7%
Lethbridge	9.30¢	9.96¢	7.1%
Calgary	8.30¢	8.68¢	4.6%
Red Deer	7.82¢	7.16¢	(8.4%)

() Denotes decrease

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With respect to other costs and operating expenses the increases per quart were stated by Mr. Stephen to be:

	<u>1969</u>	<u>1970</u>	<u>Percentage Increase</u>
Medicine Hat	4.85¢	4.97¢	2.47%
Lethbridge	4.66¢	4.83¢	3.60%
Calgary	5.06¢	5.40¢	6.70%
Red Deer	5.68¢	6.10¢	7.40%

Mr. Wells, who testified on behalf of Pass Dairy Ltd. operating in the Crowsnest Pass Controlled Area, stated that for the months of November and December 1970 and January and February 1971 the average selling price per quart was 30.73¢. He said the net operating loss sustained for this period was 0.78¢ per quart which represented a percentage loss on sales of 0.25%.

In the Ponoka area Mr. Johnstone testified that the net income had dropped from 0.64¢ per quart in 1967 to 0.10¢ per quart in 1970. The percentage of net income to sales in each of the years, he said, was 2.57% and 0.38% respectively.

The Board, in Decision No. 29892, referred to the cessation of the butter processing operations in the Ponoka plant operated by the Central Alberta Dairy Pool thereby adding to the increased costs of processing fluid milk, which process is now burdened with the additional fixed costs formerly shared with the butter processing operation. At the current hearing the Board was informed that the Ponoka plant no longer processed milk for sale to the residents of Rimbey, such processing now being done at the Red Deer plant of the Central Alberta Dairy Pool. This loss of sales further eroded the percentage of net profit to sales which this plant is earning.

In the combined statements which were tendered as exhibits at the Edmonton hearing Mr. Astle explained that the increase in the cost of milk delivered to the plant, expressed on a per quart basis, was as follows:

	<u>1969</u>	<u>1970</u>	<u>Increase</u>
Cost of Sales	15.76¢	16.07¢	0.31¢

The above increase expressed as a percentage amounts to 1.97%.

Wages and benefits and other costs and operating expenses as shown in the statement filed by Mr. Astle in the Edmonton controlled area, expressed on a per quart basis, have increased as follows:

	<u>1969</u>	<u>1970</u>	<u>Percentage Increase</u>
Wages and benefits	7.78¢	8.17¢	5.0%
Other operating costs and expenses	5.59¢	5.83¢	5.2%

The net income to sales as shown in the statements for the Edmonton area were:

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Net income to sales	2.41%	2.14%	0.80%	0.52%

In their submission the Applicants urge the Board to consider a rate of 2.5% of net income to sales as being a reasonable basis of earnings which should be permitted to them. This rate was first referred to by the Board in its Decision No. 27517, dated May 5, 1966. In that decision the Board said:

" The applicants estimate that the net profit from their fluid milk operations should be approximately 3% of sales after providing for all expenses including income tax. This basis of measuring the return for this industry, while not unreasonable, seems to be somewhat higher than the return being realized by other manufacturers and distributors of food products. The Board's auditors compared the net earnings to sales for the last three years of several major companies engaged in the food manufacturing and distributing business. The net profit earned by these businesses was in the range of 2 to 2½% of sales.

The Board has considered the return suggested by the applicants as well as the rates experienced by other segments of the food industry and has concluded that a reasonable return to the applicants with respect to their fluid milk operations should be approximately 2½% of sales."

At its 1967 hearing Dr. T. L. Powrie, Associate Professor of Economics at the University of Alberta, testified as a witness for the City of Edmonton. In its Decision No. 28144,

dated May 23, 1967, the Board, commenting on some remarks made by Dr. Powrie at the hearing said:

" In its Decision No. 27517, dated May 5, 1966, the Board pointed out that based on findings of the Board's auditors the return on sales to those industries engaged in food manufacturing and distributing ranged from 2% to 2½%.

Dr. Powrie criticised this statement on the basis that he had no information on which to evaluate the Board's judgment. The publication which the Board had used to assemble this information is 'The Survey of Industrials' published by the Financial Post. Using the 1966 edition of this publication the Board finds that the earnings experienced by a group of industries related to the processing and distribution of food vary anywhere from a loss on operations to a profit of around 3%."

The Board, in Decision No. 28144, then set out schedules showing the percent of net profit to sales for the years 1963 to 1965 which had been experienced by certain of the meat and fish packing industries, the food distributors and the dairies.

No evidence was tendered by the Applicants in these proceedings to substantiate whether the 2.5%, which the Board referred to in 1966, is still a valid rate. It should be pointed out that the information which the Board referred to in its 1966 and 1967 decisions was from data assembled by auditors employed by the Board. The Applicants at that time made no effort to substantiate the return they were seeking nor have the Applicants in these proceedings done so.

* * * * *

In applications of this nature heard by the Board in prior years no level of minimum prices have been proposed for the Board's consideration by the Applicants. In these proceedings the Applicants on whose behalf Mr. Stephen testified have submitted schedules of suggested prices for the Board's consideration. These prices, as the Board understands them, are intended to produce sufficient revenue to provide a return of 2.5% on sales. The increases in minimum prices proposed in the schedules, expressed on a per quart basis, are as follows:

<u>Homogenized</u>		<u>Wholesale</u>	<u>Retail</u>
4 qt.	unit	1 $\frac{1}{4}$ ¢	
3 qt.	unit	1	1¢
2 qt.	unit	1	1
1 qt.	unit	2	2
1 pint	unit	4	4
8 oz.	unit	5	Nil

2% Milk

4 qt.	unit	2 $\frac{1}{4}$	
3 qt.	unit	2	2
2 qt.	unit	2	2
1 qt.	unit	3	3

Skim Milk

4 qt.	unit	3	
1 qt.	unit	2	2.

Chocolate Milk

4 qt.	unit	1½	
1 qt.	unit	2	2
1 pint	unit	4	4
8 oz.	unit	5	Nil

Buttermilk

4 qt.	unit	1 1/4	
1 qt.	unit	2	2

Eggnog

1 qt.	unit	Nil	Nil
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Whipping Cream

4 qt.	unit	4	
1 qt.	unit	4	4
$\frac{1}{2}$ pint	unit	4	4

10% Milk

4 qt.	unit	1 3/4	
1 qt.	unit	2	2
1 pint	unit	2	2

Carton of 100 coffee creamers	Wholesale Price
	Reduced 5¢ per carton

During the course of the hearings in the various controlled areas the Board questioned Mr. Stephen and Mr. Astle concerning the number of production lines used in the various plants; the capacity of utilization of such production lines; the volumes of milk processed and packaged in glass containers and in paper containers; the cost of glass containers as opposed to paper containers; among other things. Generally, neither Mr. Stephen nor Mr. Astle were in a position at that time to provide the information which the Board requested but each undertook to file with the Board after the hearings such data as they were able to obtain in this regard. Such information was submitted to the Board by Mr. Stephen and Mr. Astle during the month of June.

In Decision No. 29892 the Board commented on the importance of participation by consumers to the success and usefulness of milk hearings. In the present hearing the Board must point out the necessity of the proper participation in hearings by licensed processors and distributors in the controlled areas. The processors and distributors of fluid milk in this Province are protected against unrestricted competition by other processors and distributors in the controlled areas in which they are licensed to the extent that the number of processors is limited in any given area. The Board is of the view that the processors enjoying the protection afforded by fluid milk control must accept the responsibility of participating fully and properly in milk hearings. In the past, participation by processors in hearings has not been a mandatory feature of milk control measures and the Board prefers that processors should participate in hearings as a natural part of their business rather than as a part of milk control regulation. The Board must emphasize that a proper understanding of the economics of fluid milk processing and distribution by the Board in a controlled area depends entirely upon the active participation by all processors and distributors in that area, and the failure of a processor to become involved in a hearing produces incomplete and distorted information upon which the Board must make its findings.

The Board must also point out to the Applicants that

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information supplied to the Board through their chartered accountants after the end of the hearings rather than at the hearings by witnesses thoroughly familiar with the operation of plant facilities and other details cannot receive the weight that such evidence would receive had it been presented in a proper manner.

The supplementary information furnished to the Board by Mr. Stephen and Mr. Astle provides particulars of the sizes and types of containers, other than bulk milk containers, processed and packaged on production lines by the Applicants in the various controlled areas of the Province.

Briefly the production lines may be categorized as follows:

<u>Production Lines Using Glass Containers:</u>		<u>Plants</u>
1 pint to 1 quart sizes	-	Three
1 pint to 2 quart sizes	-	One
1 pint to 3 quart sizes in glass or plastic	-	Six
<u>Production Lines Using Paper Containers:</u>		
8 oz. to 1 quart sizes	-	Six
8 oz. to 2 quart sizes	-	Two
2 quart size	-	Eight
½ pint to 2 quart sizes	-	Two
3 and 5 gallon poly bags	-	Three
5/8 oz. creamers	-	Two

Mr. Stephen provided a supplementary report to the Board summarizing the information which he had obtained from the Applicants. The Board has reviewed the supplementary report and on the basis of the information which it contains and other statistical information contained in the exhibits filed at the hearing the following particulars have been obtained:

In the Calgary Area the number of times refillable containers are used is:

- (a) With respect to glass containers - 40 to 44 times
- (b) With respect to plastic containers
(only used by one Applicant in the area) - 128 to 153 times

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The processing and packaging cost of a 1-quart glass container compared with the processing and packaging cost of a 1-quart paper container is estimated to be:

Glass	3.13¢ to 5.11¢
Paper	5.37¢ to 7.61¢

The analysis of volumes of sales of products marketed in 1 and 2 quart containers compared to all other sizes in the controlled areas of Medicine Hat, Lethbridge, Calgary and Red Deer is as follows:

	<u>Medicine Hat</u>	<u>Lethbridge</u>	<u>Calgary</u>	<u>Red Deer</u>
1 quart sales	79.06%	71.67%	48.93%	40.62%
2 quart sales	9.32	14.69	31.78	30.39
All other sizes	<u>11.62</u>	<u>13.64</u>	<u>19.29</u>	<u>28.99</u>
	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>

1 quart sales

Glass	68%	75%	66% to 86%	68%
Paper	32%	25%	34% to 14%	32%

2 quart sales

Glass			67% to 23%	30%
Paper	100%	100%	33% to 77%	70%

Other matters referred to by Mr. Stephen in his supplementary report have reference, among other things, to the intensity of the use of the various production lines, delivery expense and marketing problems. The Board considers, however, that such particulars as have been provided have not been subjected to the scrutiny that would have resulted if all parties had had an opportunity to cross-examine a witness on these matters at the hearing. Accordingly, the Board has concluded that such information is not definitive enough to warrant its use in these proceedings.

The information provided by Mr. Astle consisted of copies of letters which he had received from the Applicants to whom his enquiries were directed and without such letters having been analysed and condensed into a report by him are of little assistance to the Board.

UNION REPRESENTATIONS

At the hearings in Southern Alberta briefs were submitted by Mr. Sweeting, the Secretary-Treasurer of the Driver salesmen, Plant, Warehouse and Cannery Employees Local Union No. 987 of Alberta, in which it is stated no opposition was being taken by the Union to the applications being made by the Applicants for a price increase. The brief points out that the wage increase granted on May 1, 1970 and continuing to April 30, 1971 represents an increase per employee of \$40.00 per month with a further increase of a similar amount for the period May 1, 1971 to April 30, 1972. The brief also points out that the base rates of pay in the dairy industry in Medicine Hat and Lethbridge are \$5.00 per month lower than the rates in the Calgary area, while in the Red Deer area the rates are \$15.00 per month lower than the rates in the Calgary area.

In the Edmonton Controlled Area counsel representing The Alberta Brotherhood of Dairy Employees and Driver Salesmen of which the employees in the Edmonton and Camrose Controlled Areas are members, read a brief on their behalf which indicates that the Brotherhood carries on collective bargaining arrangements with the plant operators and that collective agreements presently in effect terminate sometime in the Spring of 1972. In part the brief contains this statement:

" The Brotherhood, has at all times, been cognizant of the necessity of maintaining a strong and healthy dairy industry from the primary producer up to the retail distributor. There can be no doubt that a viable and economically strong dairy industry is in the public interest. The aim and goals of the brotherhood in this regard are identical to that of management in the dairy industry as the welfare and well-being of the employees in the dairy industry is directly related to the economic well-being of the dairy industry and/or the individual dairies within that industry."

CONSUMER REPRESENTATIONS

At Medicine Hat Mrs. Swan on her own behalf submitted a brief at the hearing. Mrs. Swan raised a number of questions in her brief such as the setting of maximum prices as well as

minimum prices. Many of the matters referred to in her brief have reference to regulations having to do with the packaging and sale of milk, which are matters under the jurisdiction of the Milk Control Board.

With regard to prices, the Board's jurisdiction, as pointed out earlier in this decision, extends by statute only to the fixing of minimum prices.

At Ponoka Mr. Mah Poy was also concerned with prices being charged by stores at levels higher than the minimum prices prescribed by the Board. This, as the Board indicated earlier in this decision, the stores are free to do.

In Red Deer and in Edmonton submissions were made on behalf of the Consumers' Association of Canada. The brief at Red Deer was submitted by Mrs. Brock in which she states the national policy of the Association favors a store differential policy with which she said she agreed. She also urges the Board that if an increase in the minimum price is necessary that the increase be applied to milk products other than 2% or skim milk.

The brief at Edmonton was submitted by Mrs. Walters. In her brief Mrs. Walters urges the Board that if it finds increases in minimum prices necessary to keep the price of 2% and skim milk as low as possible. Mrs. Walters disagrees with the policy of the National Association concerning store differential prices, pointing out that Alberta has the lowest price, the highest per capita consumption and generally a more stable fluid milk trade of any Province in Canada which, in her view, indicates no change should be made in the operation of the present system.

A number of questions contained in her brief are directed at the distributors and should be reviewed by the industry. Mrs. Walters indicates that, as on other occasions, a survey of consumers was made in the Edmonton area in the form of a questionnaire. She said that of 500 questionnaires distributed 270 were returned. Unfortunately, however, the questions posed in the questionnaire were not provided in the brief submitted by Mrs. Walters and it is not possible, therefore, to determine the significance of the answers given.

OTHER REPRESENTATIONS

At the hearing in Red Deer Mr. Stephen agreed with counsel for the City of Red Deer that Silverwood Industries, who operate a processing plant in that City, are endeavouring to obtain permission to cease such operation, it being their contention that it would be more economical to process the milk in Calgary for sale in the Red Deer market. In his argument counsel, referring to the losses which Silverwood contend they are sustaining in their Red Deer operation, suggests that it is premature to grant an increase in price at this time and that such increase should be deferred until it can be determined whether such increase is justified after Silverwood have the results of the change in the margin of profit accruing to them as a result of the transfer of the processing of milk for the Red Deer market to their Calgary plant.

CONCLUSIONS

The evidence adduced at the hearings and the exhibits filed substantiate that increased costs are being experienced by the Applicants, particularly with respect to wages and benefits paid to their employees and increases for items included in other costs and operating expenses.

Since the last adjustment made by the Board in 1970 collective bargaining negotiations have resulted in an increase in labour costs of $8\frac{1}{2}\%$ over the 1969 level, $2\frac{1}{2}\%$ greater than was estimated by the Applicants at the time the Board rendered its 1970 decision.

In addition the Applicants are faced with a possible further increase in this category when the labour agreements come on for renegotiation in 1972.

The employees in their roll as members of the labour force, must recognize that the higher the wage rates which they demand the higher the costs faced by the plant operators who employ their services, the result of which can only lead to

higher prices for consumers generally. It is incumbent, therefore, upon the Applicants to make the most efficient and intensive use of the labour which it employs.

The Board in this decision and in former decisions has expressed its concern for maintaining operating facilities at or near maximum utilization. As in any manufacturing process the less diversification of packaging style and sizes that prevail in the process the lower the costs tend to be and the Board is of the view that the processing and packaging of milk is no exception.

The sales analysis which the Board has referred to concerning the size and type of containers being packaged and marketed clearly indicates that the one quart and two quart containers are, by a substantial margin, the size which the consumer prefers. It has not been possible for the Board, on the basis of the data provided at the hearing, to determine the relative costs of the processing and packaging of each type and style of container which is being offered for sale but such an analysis would be of assistance to the Board, to the consumer and to the Applicants themselves, as a means of judging as to the wisdom of continuing the processing of milk in sizes which have not met favour with the consumer and which, because of the higher costs in relation to the volumes processed, have the effect of lowering the overall profit earnings.

The Board observed in Decision No. 29892:

"..... The Board is unaware of any industry that exists without its share of marginal producers. This condition is well stated in a text on economics which the Board has found to be useful on a number of occasions entitled 'Outline of Economics' by Richard T. Ely. On page 175 under the heading 'Marginal Producers' the author states:

'..... it has been shown by a number of recent investigations of producers' expenses and profits that, as a normal or usual condition of industry, unit expenses vary over a wide range, while a number of active producers are always found to be losing money. The average group of producers, like a normal community of people, contains its infants and its superannuated, sick and infirm members. These high cost producers lose money;

" 'but they help to augment the supply and thus exert some influence, though not a predominant one, upon the market price. The predominant influence is exerted by the 'marginal producers', meaning by that term those producers who will withdraw from production or materially reduce their production unless prices in the long run are high enough to cover their expenses of production including minimum or necessary profits.' "

This reference is just as applicable to "processors" as it is to "producers", i.e., in any industry marginal operators will exist. That some operators fare better than others there can be no question but the general level of earnings of each, based on the particulars contained in the privileged exhibits filed by the Board at the hearings indicates that the 1970 earnings of all are at levels lower than those experienced in other years.

The Applicants recommend to the Board that it should adopt a return of 2½% of sales as representing a reasonable level of profit. The Board referred to this recommendation earlier in this decision and has pointed out that while this was a rate referred to by the Board in other decisions, the Applicants have failed to produce any evidence that such rate should prevail at the present time. To produce this rate the Applicants for whom Mr. Stephen appeared, provided schedules of minimum prices which they ask the Board to adopt. From an examination of the schedules the Applicants propose minimum retail price increases ranging in an amount of 1¢ per quart for multiquart packages and 2¢ per quart for one quart packages of homogenized milk; 2¢ per quart for multiquart packages and 3¢ per quart for one quart packages of 2% milk; and 2¢ per quart for one quart packages of skim milk.

For the reasons indicated earlier the Board can see no justification for increasing the minimum prices to the consumer ranging from 2¢ to 3¢ per quart for single units and 1¢ to 2¢ per quart for multiquart units. It appears to the Board that efforts should be made by the Applicants to encourage the consumer to purchase his milk in units which tend to diminish the number of types and sizes of containers necessary to meet such demands, i.e., to expand the demand for milk packaged in

single quart units, thereby standardizing production lines.

The Board doubts a differential in the minimum price resulting in a higher spread in the price for a single quart as against the price per quart for multisized containers would encourage a trend to fewer types of packages. On the contrary, the minimum price differentials which the Applicants recommend could well have the opposite effect.

Having regard to these matters and after considering the evidence and the argument of counsel the Board has come to the conclusion that an increase in minimum prices is necessary. The Board, however, does not accept the prices proposed by the Applicants and will in its order changing such prices maintain differentials at levels prevailing in the minimum pricing orders now in effect.

The Board considers that when next the Applicants find it necessary to apply to the Board for a review of the level at which minimum prices should be established it will be incumbent upon them to provide proper evidence, supported by statistical data, on production line costs and other matters which the Board has referred to in this decision, by witnesses who are expert in the processing and marketing of milk and who will be available for cross-examination by other interested parties. This evidence will be required in addition to the type of financial evidence that has been provided in these and past proceedings.

DATED AT EDMONTON, in the Province of Alberta, this 16th day of August, A. D. 1971.

PUBLIC UTILITIES BOARD

(SIGNED) W. NOBBS

CHAIRMAN

(SIGNED) W. D. ABERCROMBIE

MEMBER

Certified a true copy.

Secretary

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THE BOARD OF DIRECTORS

(SIGNED) M. J. ...

Chairman

(SIGNED) H. J. ...

Secretary

Witnessed & attested

Secretary

